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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WALTER KIENZLE, Derivatively on
 Behalf of Nominal Defendant
 MAXWELL TECHNOLOGIES, INC.,

Plaintiff,

v.

DAVID J. SCHRAMM, ROBERT L.
 GUYETT, MARK S. ROSSI, YON
 YOON JORDEN, ROGER L.
 HOWSMON, KEVIN S. ROYAL, VAN
 M. ANDREWS, and GEORGE
 KREIGLER III,

Defendants,

-and-

MAXWELL TECHNOLOGIES, INC.,
 Nominal Defendant.

Case No. '13 CV0966 L WVG

**VERIFIED SHAREHOLDER
 DERIVATIVE COMPLAINT**

JURY TRIAL DEMANDED

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

1 Plaintiff Walter Kienzle (“Plaintiff”), by his undersigned attorneys, submits
2 this Verified Shareholder Derivative Complaint in the name and on behalf of nominal
3 defendant Maxwell Technologies, Inc. (“Maxwell” or “the Company”) against certain
4 officers and members of the Board of Directors of Maxwell (the “Board”) named
5 herein (collectively the “Individual Defendants”). Plaintiff bases his allegations
6 against the Individual Defendants upon personal knowledge as to his own acts and on
7 information and belief as to all other allegations, based on due investigation by
8 counsel, including: (a) review and analysis of public filings made by Maxwell and
9 other persons with the Securities and Exchange Commission (“SEC”); (b) review and
10 analysis of press releases and other publications caused to be disseminated by certain
11 of the Individual Defendants and other persons; (c) review of news articles,
12 shareholder communications, and postings on Maxwell’s websites concerning the
13 Company’s public statements; and (d) review of other publicly available information
14 concerning Maxwell and other persons.

15 **SUMMARY OF THE ACTION**

16 1. This is a shareholder derivative action brought on behalf of nominal
17 defendant Maxwell against the Individual Defendants alleging that these officers and
18 directors breached their duties to the Company from April 28, 2011 to the present
19 (the “Relevant Period”) by causing or allowing the Company to issue false and
20 misleading statements, which has caused substantial monetary losses to Maxwell in
21 addition to substantial damages to its reputation and goodwill. On behalf of
22 Maxwell, this action seeks monetary damages, corporate governance reforms,
23 accounting reforms, and removal of the infringing officers and directors to remedy
24 the Individual Defendants’ breaches of their fiduciary duties to the Company.

25 2. Maxwell is a company that develops, manufactures, and markets energy
26 storage, power delivery, and microelectronic products worldwide.

1 3. During the Relevant Period, the Individual Defendants caused the
2 Company to issue materially false and misleading statements about the Company's
3 financial condition, operations, management, and internal controls. In particular the
4 Individual Defendants failed to disclose that the Company had overstated its revenues
5 and earnings in 2011 and 2012 in violation of United States' Generally Accepted
6 Accounting Principles ("GAAP"), had prematurely recognized revenues, and lacked
7 sufficient internal accounting controls causing a 62% drop in the stock price
8 following the disclosure of the corrected accounting numbers.

9 4. The Individual Defendants knew that Maxwell's stock was artificially
10 inflated and neglected to inform shareholders of the truth, in violation of their
11 fiduciary duties.

12 5. Furthermore, the Individual Defendants' issuance of these materially
13 false and misleading statements and violations of GAAP have subjected Maxwell to a
14 complaint for violation of the federal securities laws, currently pending in this Court,
15 and captioned *Foster v. Maxwell Tech., Inc., et al*, 3:13-CV-00580-H-RBB (S.D.
16 Cal., filed Mar. 13, 2013) (hereinafter the "Securities Class Action"). In defending
17 the Securities Class Action, Maxwell has incurred investigative and litigation costs,
18 and is faced with substantial potential liability for violations of securities laws, and
19 the costs of defending the suit.

20 6. As a direct and proximate result of the Individual Defendants' breaches
21 of fiduciary duties, Maxwell has sustained damages, including, but not limited to, the
22 costs and expenses incurred as a result of its internal investigations conducted by the
23 Audit Committee and the Board of Directors with the assistance of outside forensic
24 accountants, the ongoing expenses of the securities litigation stemming from this
25 matter, the expense of implementing controls to remedy this situation, the payment of
26 additional incentive based compensation for the Individual Defendants based on the
27 inflated financial figures reported as a result of the inadequate internal controls, and a
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1 reduction in market capitalization. Furthermore, Maxwell continues to be injured by
2 the Individual Defendants' breaches of fiduciary duties through damage to the
3 Company's reputation and goodwill.

4 **JURISDICTION AND VENUE**

5 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
6 1332(a)(2) in that Plaintiff and defendants are citizens of different states and the
7 matter in controversy exceeds \$75,000.00.

8 8. This Court has personal jurisdiction over each of the defendants because
9 each defendant is either a corporation conducting business and maintaining
10 operations in this District, or is an individual who is either present in this District for
11 jurisdictional purposes or has sufficient minimum contact with this District so as to
12 render the exercise of jurisdiction by this Court permissible under the traditional
13 notions of fair play and substantial justice.

14 9. Venue is proper in this District pursuant to 28 U.S.C § 1391 because a
15 substantial portion of the transactions and wrongs complained of herein, including the
16 defendants' primary participation in the wrongful acts detailed herein, occurred in
17 this District. One or more of the defendants either resides in or maintains executive
18 offices in this District, and defendants have received substantial compensation in this
19 district by engaging in numerous activities and conducting business here, which had
20 an effect in this District.

21 **THE PARTIES**

22 **Plaintiff**

23 10. Plaintiff Walter Kienzle is presently a shareholder of Maxwell and has
24 been a shareholder at all times necessary to the claims asserted herein. Plaintiff is a
25 citizen of the State of Illinois.

Nominal Defendant

11. Nominal Defendant Maxwell Technologies, Inc. is a Delaware corporation, maintaining its principal executive offices at 5271 Viewridge Court, Suite 100, San Diego, California 92123. According to its public filings, Maxwell provides energy related technological products primarily in the United States.

Individual Defendants

12. Defendant David J. Schramm (“Schramm”) is and was at all relevant times Maxwell’s President and Chief Executive Officer (“CEO”). He is also a director of Maxwell and has been since July 2007. During the Relevant Period, Schramm participated in the wrongful conduct and issuance of improper statements, including the preparation of improper press releases and improper SEC filings and approval of other statements made to the press, security analysts, and Maxwell shareholders. Defendant Schramm is a citizen of the State of California.

13. Defendant Robert L. Guyett (“Guyett”) has served as a director since January 2000. Guyett was Chairman of the Board from May 2010 to May 2011, and previously from May 2003 to May 2007. Guyett is and was at all relevant times the Chairman of the Audit Committee. He is and was at all relevant times also a member of the Compensation and Governance & Nominating Committees. Guyett is a Certified Public Accountant (“CPA”). Given his licensing as a CPA and positions as a director and as Chairman of the Audit Committee, he had ample opportunity to prevent the false and misleading statements as well as to rectify the insufficient internal controls over financial reporting that pervaded Maxwell. Defendant Guyett is a citizen of the State of New York.

14. Defendant Mark S. Rossi (“Rossi”) has served as Chairman of the Board of Directors since May 2011. Rossi is and was at all relevant times the Chairman of the Compensation Committee. He is and was at all relevant times also a member of

1 the Audit and Governance & Nominating Committees. Rossi has been a director of
2 Maxwell since 1997. Defendant Rossi is a citizen of the State of New York.

3 15. Defendant Yon Yoon Jorden (“Jorden”) is a director of Maxwell and has
4 been since 2008. Jorden has been Chairman of the Governance & Nominating
5 Committee since 2010. She is also a member of the Audit Committee and has been
6 since 2008. Prior to joining the Maxwell Board, Jorden served as the CFO, Senior
7 Vice President, and Principal Accounting Officer of Caremark PCS from May 2002
8 to 2004. Throughout her 25 year career she has served in financial management
9 positions of increasing responsibility, ranging from Internal Audit Director to
10 Executive Vice President and CFO for publicly traded companies, including Western
11 Digital Corporation, Aera Energy LLC, AdvancePCS, and Blue Cross and Blue
12 Shield of California. Jorden was recruited for the Maxwell Board and Audit
13 Committee based on her accounting and financial management experience. Given
14 her vast experience and positions on the Board and Audit Committee, she had ample
15 opportunity to prevent the false and misleading statements as well as to rectify the
16 insufficient internal controls over financial reporting that pervaded Maxwell.
17 Defendant Jorden is a citizen of the State of Texas.

18 16. Defendant Roger L. Howsmon (“Howsmon”) is a director and a member
19 of the Compensation Committee. He has been a director of Maxwell since 2008.
20 Defendant Howsmon is a citizen of the State of California.

21 17. Defendant Kevin S. Royal (“Royal”) is and was at all relevant times
22 Maxwell’s Chief Financial Officer (“CFO”), Senior Vice President, Treasurer, and
23 Secretary. He has served in those positions since 2009. During the Relevant Period,
24 Royal participated in the wrongful conduct and issuance of improper statements,
25 including the preparation of the improper press releases and improper SEC filings and
26 approval of other statements made to the press, security analysts and Maxwell
27 shareholders. Defendant Royal is a citizen of the State of California.
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1 18. Defendant Van M. Andrews (“Andrews”) served as Senior Vice
2 President, Sales and Marketing throughout the Relevant Period until March 1, 2013,
3 when he resigned as a direct result of the ongoing investigations into false and
4 misleading statements made by the Individual Defendants being carried out by
5 Maxwell’s Audit Committee and Board of Directors. Defendant Andrews is a citizen
6 of the State of California.

7 19. Defendant George Kreigler III (“Kreigler”) served as Maxwell’s Chief
8 Operating Officer from August 2009 to April 2012. Defendant Kreigler is a citizen
9 of the State of Colorado.

10 20. The defendants referenced above in ¶¶ 12-19 above are collectively
11 referred to herein as the “Individual Defendants.” The defendants referenced in ¶¶
12 12-16 above are collectively referred to herein as the “Director Defendants.” The
13 defendants referenced in ¶¶ 12, and 17-19 above are collectively referred to herein as
14 the “Officer Defendants.”

15 **FIDUCIARY DUTIES OF THE INDIVIDUAL DEFENDANTS**

16 21. The Individual Defendants have stringent fiduciary obligations to
17 Maxwell and its shareholders.

18 22. By reason of their positions as officers, directors and/or fiduciaries of
19 Maxwell and because of their ability to control the business and corporate affairs of
20 Maxwell, the Individual Defendants owe Maxwell and its shareholders fiduciary
21 obligations of trust, loyalty, good faith, due care, disclosure, candor, and oversight,
22 and are required to use their utmost ability to control and manage Maxwell in a fair,
23 just, honest, and equitable manner. The Individual Defendants were and are required
24 to act in furtherance of the best interests of Maxwell and its shareholders so as to
25 benefit all shareholders equally and not in furtherance of their personal interest or
26 benefit.

1 23. Each director and officer of the Company owes to Maxwell and its
2 shareholders the fiduciary duty to exercise good faith, loyalty, and diligence in the
3 administration of the affairs of the Company and in the use and preservation of its
4 property and assets, and the highest obligations of fair dealing. In addition, as
5 officers and/or directors of a publicly held company, the Individual Defendants have
6 a duty to promptly disseminate accurate and truthful information with regard to the
7 Company's true forecasts and business prospects.

8 24. The Individual Defendants, because of their positions of control and
9 authority as directors and/or officers of Maxwell, were able to, and did, directly
10 and/or indirectly, exercise control over the wrongful acts complained of herein, as
11 well as the contents of the various public statements issued by the Company.
12 Because of their advisory, executive, managerial, and directorial positions with
13 Maxwell, each of the Individual Defendants had access to adverse, non-public
14 information about the financial condition, operations, market demands for products,
15 and improper representations of Maxwell.

16 25. At all times relevant hereto, each of the Individual Defendants was the
17 agent of each of the other Individual Defendants and of Maxwell, and was at all times
18 acting within the course and scope of such agency.

19 26. To discharge their duties, the Individual Defendants were and are
20 required to exercise reasonable and prudent supervision over the management,
21 policies, practices, and controls of the affairs of the Company. By virtue of such
22 duties, the Individual Defendants were required to, among other things:

23 (a) refrain from acting upon material inside corporate information to
24 benefit themselves;

25 (b) conduct the affairs of the Company in an efficient, business like
26 manner so as to make it possible to provide the highest quality performance of its
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1 business, to avoid wasting the Company's assets, and to maximize the Company's
2 value;

3 (c) remain informed as to how Maxwell conducted its operations,
4 and, upon receipt of notice or information of imprudent or unsound conditions or
5 practices, to make reasonable inquiry in connection therewith, and to take steps to
6 correct such conditions or practices and make such disclosures as necessary to
7 comply with applicable laws;

8 (d) ensure that the Company was operated in a diligent, honest and
9 prudent manner in compliance with all applicable laws, rules and regulations;

10 (e) properly and accurately guide shareholders and analysts as to the
11 true financial condition of the Company at any given time, including making accurate
12 statements about the Company's financial results and prospects, and ensuring that the
13 Company maintained an adequate system of financial controls such that the
14 Company's financial reporting would be true and accurate at all times;

15 (f) ensure that the Company's revenue projections were based on
16 appropriate support and documentation, and were routinely checked for accuracy;

17 (g) ensure that there were sufficient checks and balances in Maxwell's
18 accounting and finance functions, and related functions, to prevent accounting
19 irregularities, internal control problems, and/or overstatement of revenue or asset
20 values; and

21 (h) ensure that no inaccurate financial information about Maxwell
22 was released to the public that would tend to artificially inflate Maxwell's stock, and
23 that would thus cause corresponding or greater harm to the Company's value when
24 the truth was revealed.

25 27. Moreover, Maxwell maintains a Code of Business Conduct and Ethics
26 (hereafter the "Code"), which applies to Maxwell's "directors, officers, employees,
27 and agents, whether they work for Maxwell on a full-time, part-time, consultative, or
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1 temporary basis.” The purpose of the Code is to “[describe] the core values and
2 beliefs of Maxwell and [provide] the foundation for all business conduct. Our
3 guidelines for conducting Maxwell business are consistent with the highest standards
4 of business ethics.” The Code states in relevant part:

5 It is essential that each employee views these standards not as a burden
6 but as a core part of Maxwell’s values and understands that violations of
7 these standards will not be tolerated. All Maxwell employees have a
8 duty to report any known or suspected violation of this Code, including
9 any violation of laws, rules, regulations or policies that apply to Maxwell
worldwide. Reporting a known or suspected violation of this Code by
others will not be considered an act of disloyalty, but an action to
safeguard the reputation and integrity of Maxwell Technologies, Inc. and
its employees.

10 ***

11 **TRANSACTIONS**

12 Various stakeholders, including shareholders, vendors, and those who
13 purchase Maxwell products and devices, rely on Maxwell to be reliable
14 and trustworthy in the way it carries out and documents its transactions.
15 Maxwell is also required by law, including, specifically, securities laws,
16 to maintain accurate books and records and a related system of internal
17 controls. The policies described in this section govern Maxwell
transactions and Maxwell employees’ actions relating to those
transactions to ensure that they will be carried out in a compliant manner
and with reliability and integrity. Please also see other related Maxwell
and local policies and procedures.

18 **FINANCIAL RESPONSIBILITY AND AUTHORIZATION**

19 Each Maxwell employee must ensure that no false or intentionally
20 misleading entries are made in Maxwell’s accounting records.
21 Intentional misclassification of transactions regarding accounts,
22 departments, or accounting periods violate the law and the Code. All
transactions must be supported by accurate documentation in reasonable
detail, recorded in the proper account and in the proper accounting
period.

23 If any employee has concerns or complaints regarding questionable
24 accounting, auditing or other financial records, he or she must report
those concerns to the Audit Committee of the Board of Directors, the
Compliance Department or the Maxwell Ethics Hotline.

25 Employees must act with absolute financial and record-keeping integrity
26 in processing travel and expense reports and other financial transactions.
27 Employees must follow requirements regarding responsibility and
28 approval for committing Maxwell financial or other resources. Cash or
other assets must not be maintained in any unrecorded or “off-the-
books” fund for any purpose. Compliance with Generally Accepted

Accounting Principles (GAAP) and the Company's system of internal controls is required at all times. Proper justification is required when alternative accounting treatment is possible under GAAP.

SECURITIES LAWS AND TRADING

Maxwell shares information openly with its employees. At times, we may receive confidential company information before it is made publicly available to ordinary investors. Some of that information may be considered significant, or "material", and could be important to an investor deciding to buy, sell or hold securities, such as Maxwell stock. Examples of information that could be material are:

- Information about possible business deals, such as a merger, purchase, sale or joint venture.
- Financial results or changes in dividends.
- Important management changes.
- Major raw material shortages or discoveries.
- Significant product or manufacturing process developments.
- Gain or loss of a significant customer or supplier.
- Major lawsuit or regulatory investigation.
- Any other information that may positively or negatively affect the stock price of Maxwell or any other company.

Do not use confidential information for personal benefit. Do not trade securities based on material inside information. Do not provide inside information to others. Employees may not purchase or sell Maxwell stock or transfer stock into or out of Maxwell stock funds in any company savings plan or other benefit plan during announced Trading Black-Out Periods. Even if you are not covered by formal blackout restrictions, you are encouraged to wait until at least 24 hours after material inside information has been publicly disclosed before trading to ensure the market has had an opportunity to absorb and evaluate the information.

28. Similarly, the Director Defendants are required to comply with the Board Guidelines which states:

I. Role of the Board of Directors

The Board of Directors (the "Board") of Maxwell Technologies, Inc. (the "Company") is elected by the Company's stockholders to oversee the Chief Executive Officer and other senior management in the competent and ethical operation of the Company on a day-to-day basis. To satisfy this duty, the members of the Board will take a proactive,

1 focused approach to their position, and set standards to ensure that the
 2 Company is committed to business success through maintenance of the
 highest standards of responsibility and ethics.

3 29. The directors are expected to promote the best interests of the
 4 Company's stockholders in terms of corporate governance, fiduciary responsibilities,
 5 risk management, compliance with applicable laws and regulations, and maintenance
 6 of accounting, financial and other internal controls. Finally, the Company's Audit
 7 Committee Charter specifically provides that the members of the Audit Committee—
 8 defendants Guyett, Rossi, and Jorden—shall “assist the Board in fulfilling their
 9 oversight responsibility...relating to the Company's financial statements and the
 10 financial reporting process, the systems of internal accounting and financial controls,
 11 the internal audit function, the annual independent audit of the company's financial
 12 statements, and the legal compliance and ethics programs as established by
 13 management and the Board.”

14 30. To that end, the Audit Committee's primary responsibilities and duties
 15 include, among other things, to:

16 **D. General Oversight Responsibilities**

- 17 1. Review the content and clarity of all material communications
 18 with the public regarding changes in financial projections prior to
 their release.
- 19 2. At least annually, review the Company's “critical accounting
 20 policies” with management and the independent auditors.
- 21 3. Review major changes to the Company's auditing and accounting
 22 policies, principles and practices as suggested by the independent
 auditors or management.
- 23 4. Obtain reports from management, and, if so determined by the
 24 Audit Committee, from the independent auditors that the
 25 Company's subsidiary/foreign affiliated entities are in conformity
 26 with applicable accounting and internal controls requirements and
 the Company's Code of Business Conduct and Ethics pertaining
 to such matters, including disclosures of insider and affiliated
 party transactions.
- 27 5. Review with management and the independent auditors any
 28 correspondence with regulators or governmental agencies and any
 employee complaints or published reports that raise material

1 issues regarding the Company's financial statements or accounting
2 policies.

3 6. Review with counsel legal compliance matters including corporate
4 securities trading policies and other legal matters that may have a
5 material impact on the financial statements, the Company's
6 compliance policies and any material reports or inquiries received
7 from regulators or governmental agencies.

8 7. Oversee establishment and implementation of procedures for
9 receiving, retaining and investigating reports of illegal acts
10 pertaining to accounting or internal control matters involving the
11 Company detected by the independent accountants or others and,
12 in accordance with such procedures, supervise the investigation of
13 such reports of illegal acts, review the actions taken or to be taken
14 by the Company to remediate such illegal acts, and, if appropriate,
15 recommend further action by the Board of Directors. Oversee
16 establishment and implementation of procedures for the
17 confidential, anonymous submission by employees of the
18 Company and others of concerns or complaints regarding
19 accounting or internal control matters and investigate any such
20 concerns or complaints.

21 8. Review and approve all related party transactions (as defined in
22 Section 404 of Regulation S-K) involving the Company.

23 9. Review and discuss with management and the independent
24 auditors new or proposed accounting rules or pronouncements that
25 may affect the Company. 10. Review and update periodically
26 concepts pertaining to accounting and internal controls topics
27 within the Code of Business Conduct and Ethics and communicate
28 same to the Governance Committee.

31. Each Individual Defendant, by virtue of his position as a director and/or officer, owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and/or officers of Maxwell, the absence of good faith on their part, and a reckless disregard for their duties to the Company and its shareholders that the Individual Defendants were aware or should have been aware posed a risk of serious injury to the Company. The conduct of the Individual Defendants who were also officers and/or directors of the Company during the Relevant Period have been ratified by the

1 remaining Individual Defendants who collectively comprised all of Maxwell's Board
2 during the Relevant Period.

3 32. The Individual Defendants breached their duties of loyalty and good
4 faith by allowing defendants to cause, or by themselves causing, the Company to
5 misrepresent its financial results as detailed herein, by failing to properly oversee the
6 Company's business and operations, and by failing to prevent the Individual
7 Defendants from taking such illegal actions. As a result, Maxwell has expended, and
8 will continue to expend, significant sums of money, has suffered a severe drop in
9 stock price, and has suffered a continued loss of reputation and goodwill.

10 **FACTUAL ALLEGATIONS**

11 **Company Background**

12 33. Maxwell develops, manufactures, and markets energy storage, power
13 delivery and microelectronic products worldwide.

14 34. The Company offers ultracapacitors, which are energy storage devices
15 that provide energy storage and power delivery solutions for applications in the
16 transportation, automotive, information technology, renewable energy, and industrial
17 electronics industries; and CONDIS high-voltage capacitors comprising grading and
18 coupling capacitors, and capacitive voltage dividers used to ensure the safety and
19 reliability of electric utility infrastructure and other applications involving transport,
20 distribution, and measurement of high-voltage electrical energy.

21 35. Maxwell also provides radiation-hardened microelectronic products,
22 including single-board computers and components, such as high-density memory and
23 power modules for satellites and spacecraft applications.

24 36. The Company markets and sells its products through direct and indirect
25 sales for integration by original equipment manufacturers into a range of end
26 products. Maxwell was founded in 1965 and is headquartered in San Diego,
27 California.

1 37. In recent years, Maxwell has been a favorite of analysts focusing on the
2 energy technology sector due to its place as an ultracapacitor manufacturer in the new
3 world of electric automobiles and other high powered devices. During the Relevant
4 Period there were several positive news stories about the Company's prominent
5 position in this emerging niche market.

6 **Individual Defendants Cause Maxwell to Make False and Misleading Statements**

7 38. The Individual Defendants named herein breached their fiduciary duties
8 by causing and allowing Maxwell to issue public statements which did not accurately
9 portray Maxwell's true fiscal position and business prospects.

10 39. During the Relevant Period, the Individual Defendants knowingly
11 caused the Company to issue false and misleading statements about the Company's
12 business and prospects. In breach of their fiduciary duties of good faith and loyalty,
13 and with respect to the members of the Audit Committee (Defendants Guyett, Jorden,
14 and Rossi), their fiduciary responsibilities as members of the Audit Committee, the
15 Individual Defendants willfully ignored the obvious and pervasive problems with the
16 Company's financial statements, its accounting practices, and its lack of adequate
17 internal and financial controls, and failed to make a good faith effort to correct the
18 problems or prevent their recurrence.

19 40. During the Relevant Period, the Individual Defendants knowingly
20 caused the Company to make a series of false and misleading statements regarding
21 the financial condition of the Company. Specifically, the Individual Defendants
22 caused or allowed the Company to conceal from its shareholders that its financial
23 statements for fiscal years 2011 and 2012 contained significant errors and should no
24 longer be relied upon. The Individual Defendants also caused or allowed the
25 Company to have a material weakness in its internal controls over financial reporting,
26 and caused or allowed the Company to conceal the material weakness from
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1 shareholders. This material weakness in internal controls over financial reporting
2 was the cause of the errors in the financial statements for 2011 and 2012.

3 41. As a result of the materially false and misleading statements and the lack
4 of internal controls, the Individual Defendants caused or allowed the Company to
5 falsely inflate Maxwell's stock price and have subjected Maxwell to the Securities
6 Class Action. In defending the Securities Class Action, Maxwell will continue to
7 incur litigation costs, and is faced with substantial potential liability for violations of
8 securities laws.

9 42. On April 28, 2011, Maxwell issued a press release announcing its first
10 quarter 2011 financial results. Defendant Schramm, with the knowledge and explicit
11 approval of Defendants Guyett, Jorden, and Rossi, caused the Company to issue a
12 statement, read below in its pertinent part:

13 "Energy storage solutions for wind turbine blade pitch systems and
14 hybrid and electric transit vehicle drive systems continued to be primary
15 drivers of ultracapacitor sales growth, along with increasing
16 contributions from automotive stop-start idle elimination systems and
17 various backup power applications," said David Schramm, Maxwell's
18 president and chief executive officer. "This strong top line growth and
19 ongoing cost reduction and efficiency improvements also enabled the
20 company to continue improving operating results."

21 * * *

22 "We expect sequential top line growth of five to seven percent in the
23 second quarter," Schramm said. "For the full year, we continue to expect
24 top line growth of more than 20 percent over 2010, and steadily
25 improving operating performance should enable the company to
26 generate cash from operations and be profitable on a non-GAAP basis
27 going forward."

28 43. That same day, after releasing its first quarter 2011 results, Maxwell
hosted a conference call for analysts, media representatives, and investors in which
Defendant Schramm stated the following:

We are pleased to report that Maxwell reported total revenue of \$35.3
million for the first quarter ended March 31, 2011. That's up 32% from
the \$26.6 million reported in the same period a year ago, that growth was
driven mainly by strong ultracapacitor sales of \$21.4 million, which is
up 55% from the \$13.8 million recorded in Q1 of 2010.

1 Sales of microelectronics and high-voltage capacitor products came in at
2 \$13.9 million for the quarter, up 8% from last year's first quarter and
both of these legacy product lines continue to make important
contributions to the Maxwell bottom line.

3 That sales growth across all three product lines along with continuing
4 costs and efficiency improvements enable the company to show a small
5 net profit for the quarter; that's a modest, but encouraging step toward
our goal of sustainable and increasing profitability.

6 44. With these statements, Defendant Schramm presented a bright picture of
7 Maxwell's future, incorporating the falsely recognized revenue numbers into his
8 positive outlook.

9 45. On May 5, 2011, Maxwell filed its first quarter 2011 Form 10-Q,
10 incorporating the results announced on April 28, 2011, with the SEC. Defendants
11 Schramm and Royal each signed the 10-Q and internal control certifications,
12 affirming that they were duty-bound to design "such internal control over financial
13 reporting, or caused such internal control over financial reporting to be designed
14 under [their] supervision, to provide reasonable assurance regarding the reliability of
15 financial reporting and the preparation of financial statements for external purposes in
16 accordance with generally accepted accounting principles," and that they had fulfilled
17 their duty to report to the board and auditors "[a]ll significant deficiencies and
18 material weaknesses in the design or operation of internal controls over financial
19 reporting which are reasonably likely to adversely affect the registrant's ability to
20 record, process, summarize and report financial information."

21 46. On May 17, 2011, Defendant Rossi took was elected to replace
22 Defendant Guyett as Chairman of the Company's Board of Directors. Unfortunately,
23 this change in control had no effect on the Board's failure to live up to its fiduciary
24 duties and only seemingly facilitated the lack of internal controls and issuance of
25 false and misleading statements.

26 47. Flowing from the inflated positive financial disclosures of recent
27 months, on May 24, 2011, Maxwell secured a large contract to supply ultracapacitors
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1 for Flextronics Automotive's recuperation system for fuel-efficient, low-emission
2 commercial vehicles. In a press release announcing the contract, Defendant
3 Schramm stated, "As this supply agreement demonstrates, Ultracapacitors' high
4 efficiency, all temperature performance and long operational life make them a
5 preferred storage solution for hybrid buses and other heavy, commercial and
6 passenger vehicles."

7 48. Maxwell provided more product-based positive information to
8 shareholders on June 15, 2011, when it announced the launch of a new ultracapacitor
9 product that could store energy while a commercial truck would otherwise be idling
10 and allowed the engine to be completely shut off and then instantly turned back on
11 when necessary. Maxwell shared the preliminary marketing strategy with analysts in
12 order to generate positive financial press regarding the product launch.

13 49. On July 28, 2011, Maxwell issued a press release announcing its second
14 quarter 2011 financial results. The Company misleadingly reported a net loss of only
15 \$1.2 million, or (\$0.04) diluted EPS, and revenue of \$38.5 million for the second
16 quarter ended June 30, 2011. Defendant Schramm, with the knowledge and explicit
17 approval of Defendants Guyett, Jorden, and Rossi, caused the Company to issue a
18 statement, read below in its pertinent part:

19 "Rapidly increasing sales into stop-start idle elimination systems in
20 micro hybrid autos and various backup power applications augmented
21 continuing strong sales for wind turbine blade pitch systems and hybrid
22 and electric transit vehicle drive systems to generate another record
quarter for ultracapacitor sales," said David Schramm, Maxwell's
president and chief executive officer.

23 * * *

24 "We expect sequential top line growth of five to seven percent in the
25 third quarter," Schramm said. "For the full year, we continue to expect
26 that year-over-year top line growth will exceed 20 percent, and steadily
improving operating performance should enable the company to be
profitable on a non-GAAP basis going forward."

1 50. That same day, after releasing its results for the second quarter 2011
 2 ended June 30, 2011, Maxwell hosted a conference call for analysts, media
 3 representatives, and investors in which Defendants Schramm and Royal stated the
 4 following:

5 DAVID SCHRAMM, PRESIDENT AND CHIEF EXECUTIVE
 6 OFFICER: Thank you, Mike and good afternoon everybody. We are
 7 pleased to report that Maxwell recorded total revenue of \$38.5 million
 8 for the second quarter ended June 30, 2011. That's up 30% from the
 \$29.6 million reported in the same period a year ago. That growth was
 driven mainly by strong ultracapacitor sales of \$24.4 million. That's up
 54% from the \$15.9 million recorded in Q1 of 2010.

9 Sales of microelectronics and high-voltage capacitor products came in at
 10 \$14 million for the quarter, up 2% from last year's first quarter and both
 11 of these mature product lines continue to make significant contributions
 12 to the Maxwell bottom line. That sales growth along with continuing
 13 costs and efficiency improvements enable the company to show a non-
 GAAP net profit of about \$1.6 million for the quarter. Now, that's the
 fifth consecutive quarter that the company has been profitable on a non-
 GAAP basis. Kevin will provide more details on those and some other
 financial items in a few minutes.

14 ***

15 KEVIN ROYAL, CHIEF FINANCIAL OFFICER: Thank you, David.
 16 I'm going to spend a few minutes providing some additional information
 17 on our second quarter 2011 financial results. Our revenues were \$38.5
 18 million for the second quarter of 2011, up 9% from Q1 2011. The higher
 revenues in the second quarter were driven by the 14% sequential
 increase in ultracapacitor product sales, which generated \$24.4 million in
 revenues for the quarter.

19 Revenues from our microelectronics products were down slightly this
 20 quarter, while our high voltage product revenues were up slight
 21 compared with Q1 2011. Non-GAAP gross profit was \$15.7 million or
 41% of revenues for the second quarter of 2011 compared to non-GAAP
 22 gross profit of \$14.1 million or 40% of revenues for the first quarter of
 2011. In the current quarter, non-GAAP gross profit reflected
 23 improvement in our gross profit as a percentage of sales on
 ultracapacitor products due to ongoing product cost reduction programs
 and higher volume. Non-GAAP gross profit excludes stock-based
 24 compensation expense and amortization of intangible assets. Our target
 non-GAAP gross profit as a percentage of revenues remains 40%.

25 Our operating expenses increased during Q2 2011. The increase in
 26 operating expenses were driven by a reserve of \$2.6 million for the
 27 anticipated settlement of a legal – and higher than anticipated legal
 28 spending due to ongoing legal matters. These increases were offset in
 part by lower research and development expense due to lower project
 relating spending in Q2 2011 versus Q1 2011.

1 Total non-GAAP operating expenses for Q2 2011 were \$13.7 million
2 compared with Q1 2011 non-GAAP operating expenses of \$13.1
3 million. Non-GAAP operating expenses exclude stock-based
4 compensation expense, amortization of intangible assets, and the
5 expense associated with the anticipated legal settlement. We expect non-
6 GAAP operating expense to range from \$14 million to \$14.5 million per
7 quarter for the remainder of 2011. We have increased the outlook for
operating expense due to anticipated spending on ongoing legal matters.
These matters include the government ongoing review of the SCPA
matter, which focuses on past offices, effort related to intellectual
property protection and other corporate related matters. Our legal
spending in the second quarter of 2011 was higher than historical levels
and we anticipate this level of spending to continue through the
remainder of the year.

8 We reported non-GAAP net income of \$1.7 million or \$0.06 per diluted
9 share for the second quarter compared with non-GAAP net income of
\$161,000 million or \$0.01 per diluted share for the first quarter 2011.
10 Non-GAAP net income excludes stock-based compensation expense,
11 amortization of intangible assets, the anticipated legal settlement and a
12 gain on embedded derivatives. Our earnings before interest expense,
taxes, depreciation and amortization, or EBITDA was \$929,000 in Q2, a
\$3.5 million excluding the expense for anticipated legal settlement
compared to \$2.5 million in Q1.

13 Now, I'd like to turn to the balance sheet. We ended the quarter with
14 cash of \$29.8 million, which represents a decrease in cash of \$3.3
15 million from Q1, 2011. The significant components of our cash activity
16 for the quarter include capital spending of \$4.4 million offset by
17 favorable effects on cash from changes in exchange rates of \$1.6 million.
18 Cash used in operations in Q2 was approximately \$238,000 and the
19 increase in accounts payable was offset by consumption of cash related
to inventory growth and increased accounts receivable balances. The
increase in accounts receivable is due to sales growth and shipment
linearity in the second quarter of 2011 with 57% of shipments falling in
the final month of the quarter. While our cash balances are lower at the
end of Q2, this is driven by investment and capital equipment and
facilities as well as an increase in inventory to support Q3 sales.

20 51. On August 8, 2011, Maxwell filed its second quarter 2011 Form 10-Q,
21 incorporating the results announced on July 28, 2011, with the SEC. Defendants
22 Schramm and Royal once again affirmed their duties to maintain adequate internal
23 controls over financial reporting and to insure the accuracy of the financial statements
24 by signing the Form 10-Q and internal control certifications.

25 52. On September 12, 2011, Maxwell announced that it had entered into a
26 contract with China's largest bus manufacturer, Zhengzhou Yutong Bus Company,
27
28

1 Ltd. to provide ultracapacitors for energy storage and power delivery in fuel-efficient,
2 low-emission, diesel-electric hybrid buses for public transit agencies across the globe.

3 53. On November 3, 2011, Defendant Schramm, with the knowledge and
4 explicit approval of Defendants Guyett, Jorden, and Rossi, caused the Company to
5 issue a press release announcing its third quarter 2011 financial results. The
6 Company reported net income of \$298,000, or \$0.01 diluted EPS, and revenue of
7 \$41.1 million for the third quarter ended September 30, 2011. In the release
8 Defendant Schramm stated in part:

9 “Strong demand for ultracapacitor products across multiple applications,
10 including stop-start idle elimination systems in micro hybrid autos,
11 backup power, wind turbine pitch control and power quality, and hybrid
and electric transit vehicle drive systems continued to drive sales
growth,”

12 * * *

13 “We expect sequential top line growth of approximately three to five
14 percent in the fourth quarter, which would bring total top line growth to
nearly 30 percent for the full year,” Schramm said. “Although we
15 anticipate normal seasonal softness early next year, we believe that sales
for the full year will grow at a rate similar to what we have seen in 2011,
16 and ongoing operating performance improvement should enable the
company to be profitable on a non-GAAP basis going forward.”

17 54. On the same day, after releasing the results for the third quarter 2011,
18 Maxwell hosted a conference call for analysts, media representatives, and investors in
19 which Defendants Schramm and Royal stated the following:

20 DAVID SCHRAMM: Very good Mike, and thank you, and good
21 afternoon, everybody. We are pleased to report that Maxwell recorded
total revenue of \$41.1 million for the third quarter ending September 30,
22 now that’s up 31% from the same period a year ago. That growth was
mainly driven by strong ultracapacitor sales of \$24.9 million. Now that’s
23 up 3% from Q3 of 2010.

24 Sales of microelectronics and the high-voltage capacitor products came
in at \$16.2 million for the quarter, up 26% from last year’s first quarter.
25 That’s higher than usual for these mature product lines with boats
continue to deliver solid contributions to our bottom line. This growth,
26 along with continuing costs and efficiency improvements enable the
company to show a non-GAAP net profit of about \$1.2 million for the
27 quarter. That’s the sixth consecutive quarter that Maxwell has been
profitable on a non-GAAP basis. So our products aren’t just contributing
28 to a greener world, but also delivering another kind of green to the

1 bottom line. Kevin will provide more financial details on all this in a few
2 minutes.

3 ***

4 KEVIN ROYAL: Thank you, David. I will now spend a few moments
5 discussing financial highlights for third quarter 2011. Our revenues were
6 41.1 million up 7% from Q2 2011. This quarter, higher revenues were
7 driven by growth in our high-voltage business, related to an increase in
8 shipments and favorable currency exchange rates. Sales of our
9 ultracapacitor product were up slightly quarter-over-quarter, as we
10 continued to achieve substantial growth in the bus and automotive
11 markets, while sales in the wind sector were down, primarily associated
12 with a slowdown of the wind market in China.

13 Non-GAAP gross profit was \$16.7 million or for the third quarter of
14 2011 compared to non-GAAP gross profit of \$15.7 million for the
15 second quarter of 2011. For both the second and third quarters, we
16 achieved a non-GAAP gross profit margin of 41%, as continued to focus
17 on cost reduction and gross profit improvement. We continue to focus on
18 reducing the cost of our ultracapacitors products through material cost
19 reduction, design improvement, and manufacturing productivity
20 improvements.

21 Non-GAAP gross profit excludes stock-based compensation expense and
22 amortization of intangible assets. Non-GAAP operating expenses
23 increased from 13.7 million in Q2 2011 to 14.6 million in Q3 2011. The
24 increase in operating expenses was driven by higher legal, audit, and
25 travel cost. Non-GAAP operating expenses exclude stock based
26 compensation expense, amortization of intangible assets, and in Q2 2011
27 expense associated with an anticipated legal settlement.

28 Last quarter we increased the outlook for non-GAAP operating expenses
from \$14 million to \$14.5 million per quarter for the remainder of 2011,
due to anticipated spending on on-going legal matters.

In the third quarter, non-GAAP operating expenses were in line with that
outlook. Currently, we anticipate continued higher than normal legal
spending, and additional spending in sales, and marketing, and research
and development during the fourth quarter. Due to this, we anticipate
that non-GAAP operating expenses will be in the range of 14.5 to 15
million for the fourth quarter of 2011.

Non-GAAP income from operations was up slightly quarter-over-quarter
to 2.1 million for Q3 2011 compared to 1.9 million for Q2 2011.
However, we incurred a higher tax expense in Q3 2011 compared to Q2
due to higher profits from our Swiss subsidiary. Therefore non-GAAP
net income was down quarter-over-quarter at 1.2 million or \$0.04 per
diluted share for the third quarter 2011, compared with non-GAAP net
income of 1.7 million or \$0.06 per diluted share for the second quarter of
2011.

Non-GAAP income from operations and non-GAAP net income
excludes stock-based compensation expense, amortization of intangible
assets, and the Q2 2011 expense for the anticipated legal settlement.

1 Now, I'd like to turn to the balance sheet. We ended the quarter with
2 cash of 31 million, which represents an increase in cash of 1.2 million
from second quarter 2011. This quarter, we generated 5.9 million in cash
from operations, while we invested 3.7 million in capital spending.

3 Cash generated from operations in Q3 related primarily to our net
4 income of 298,000 which included net non-cash charges of 2.2 million,
5 and a decrease accounts receivable balances of 3.2 million as we
achieved strong collections during the third quarter.

6 55. On November 4, 2011, based on the statements listed above, Maxwell's
7 stock price reached its Relevant Period high of \$21.20 per share.

8 56. On November 7, 2011, Maxwell filed its third quarter 2011 Form 10-Q,
9 incorporating the results announced on November, 2011, with the SEC. Defendants
10 Schramm and Royal one again affirmed their duties to maintain adequate internal
11 controls over financial reporting and to insure the accuracy of the financial statements
12 by signing the Form 10-Q and internal control certifications.

13 57. Following a significant dip in stock price in late November from its
14 Relevant Period high, on December 5, 2011, Maxwell entered into a Credit
15 Agreement with Well Fargo Bank, N.A. for a \$15 million revolving line of credit and
16 an equipment term loan of \$12.5 million.

17 58. On January 19, 2012, the Company announced that Bombardier
18 Transportation, a leading producer of rail vehicles and rail transportation equipment,
19 systems, and services, selected Maxwell's ultracapacitors for a new train braking
20 energy recuperation system.

21 59. On January 31, 2011, Maxwell settled a criminal complaint filed by the
22 SEC and United States Department of Justice ("DOJ") and a civil complaint filed by
23 the SEC for violations of the Foreign Corrupt Practices Act ("FCPA"). Maxwell
24 agreed to pay an \$8 million criminal penalty and \$5.654 million in disgorgement of
25 profits to resolve the matter. The SEC civil complaint alleged violations of the books
26 and records and internal controls provisions of the FCPA when the Company
27 repeatedly paid bribes to Chinese officials in order to obtain and retain sales
28

1 contracts. The SEC and DOJ's complaints further alleged that the illicit payments
2 were made with the knowledge and approval of Maxwell's executives and that
3 Maxwell failed to accurately record the payments on its books and records and failed
4 to implement or maintain a system of effective internal accounting controls and failed
5 to prevent the payments. This investigation and the costly settlement of its claims
6 should have put the Individual Defendants on notice that Maxwell had systemic
7 problems with internal controls over financial reporting, but the Company continued
8 to let its financials run amok and continued to release false and misleading statements
9 through the remainder of the Relevant Period.

10 60. Based on the inaccurate financial statistics included in the statements
11 listed above made during the Relevant Period, on February 7, 2012, the
12 Compensation Committee of the Board of Directors of Maxwell approved increases
13 in the base salaries and cash bonuses for Maxwell's named executives. Defendants
14 Guyett, Howsmon, and Rossi (Chairman) were members of the Compensation
15 Committee and explicitly approved these decisions. The Compensation Committee
16 increased Defendant Schramm's base salary from \$495,000 to \$512,325, additionally
17 the Committee awarded him a \$400,000 incentive based annual bonus, 37,240
18 restricted share awards ("RSA") as long-term incentive awards, and a targeted bonus
19 of \$512,325. The Compensation Committee increased Defendant Royal's base salary
20 from \$311,000 to \$322,922 and awarded him a \$135,774 incentive based annual
21 bonus, 15,046 RSA as long-term incentive awards, and a \$161,461 targeted bonus.
22 The Compensation Committee increased Defendant Kreigler's base salary from
23 \$318,270 to \$326,863 and awarded him a \$135,212 incentive based annual bonus,
24 15,393 RSA as long-term incentive awards, and a \$163,432 targeted bonus. The
25 Compensation Committee increased Defendant Andrews' base salary from \$252,000
26 to \$277,200 and awarded him a \$115,680 incentive based annual bonus, 12,188 RSA
27 as long-term incentive awards, and a \$138,600 targeted bonus.

1 61. The Compensation Committee increased the base salaries based on its
2 authority set out in the Compensation Committee Charter.

3 62. The Compensation Committee issued the incentive based annual
4 bonuses based on the Company's 2011 cash incentive bonus program. The
5 Company's April 1, 2011 definitive proxy statement states:

6 The Compensation Committee retains a degree of discretion with respect
7 to our annual cash incentive bonus program, and uses multiple
8 performance objectives in that program, which minimizes the risk that
might be posed by the short-term variable component of our
compensation programs

9 63. The Compensation Committee approved the long-term incentive awards,
10 in the form of RSA under the Company's 2005 Omnibus Equity Incentive Plan. The
11 criteria for incentive awards in the 2005 Omnibus Equity Incentive Plan is set forth in
12 the Company's April 5, 2005 definitive proxy statement as follows:

13 Performance targets may include minimum, maximum and target levels
14 of performance, with the size of the award or vesting based on the level
15 attained. Performance measures are criteria established by the
16 Compensation Committee relating to any of the following, as it may
17 apply to an individual, one or more business units, divisions or
18 subsidiaries, or on a company-wide basis, and either in absolute terms or
19 relative to the performance of one or more comparable companies or an
20 index covering multiple companies: income from operations; revenue;
21 earnings before interest, taxes, depreciation and amortization, as adjusted
22 (EBITDA as adjusted); income before income taxes and minority
23 interests; operating income; pre- or after-tax income; average accounts
24 receivable; cash flow; cash flow per share; net earnings; earnings per
share; return on equity; return on invested capital; return on assets;
growth in assets; economic value added; share price performance; total
stockholder return; improvement in or attainment of expense levels;
relative performance to a group of companies or relevant market indices
comparable to the Company; and strategic business criteria consisting of
one or more objectives based on our meeting specified goals relating to
revenue, market penetration, business expansion, costs or acquisitions or
divestitures. The Compensation Committee can select other goals not
listed here for awards that are not intended to meet the requirements of
"qualified performance-based compensation."

25 64. The Compensation Committee approved the targeted bonuses for
26 Defendants Schramm, Royal, Kreigler, and Andrews under the Company's 2012
27 bonus plan. The Company's Form 8-K filed February 7, 2012 with the SEC states:
28

1 The 2012 bonus plan for each named executive officer consists of three
2 components related to the achievement of certain performance goals as
3 follows: 50% of the target bonus amount relates to the achievement of
4 revenue metrics, 25% relates to the achievement of gross profit metrics,
and 25% relates to the achievement of operating income metrics. The
performance goals will be paid out on a sliding scale subject to meeting
a minimum threshold performance level.

5 65. All of the awards granted on February 7, 2012 were based on the
6 financial statements released during the Relevant Period, which Maxwell has now
7 publicly stated are inaccurate and not to be relied upon. The payment of this
8 additional, unearned, incentive based compensation to the Officer Defendants directly
9 damaged Maxwell.

10 66. Almost immediately after the Executive Directors were granted generous
11 annual bonuses and incentive based compensation, Maxwell completed a settlement
12 in a shareholder derivative suit arising from the FCPA investigation by the SEC and
13 DOJ. There were multiple shareholder derivative suits filed in August 2010 and
14 consolidated into *Loizides v. Schramm, et al.*, Case No. 37-2010-00097953-CU-BT-
15 CTL (the "FCPA Derivative Action"). The complaint alleged breaches of fiduciary
16 duty of loyalty and unjust enrichment against the directors and officers of Maxwell
17 for violations of the FCPA and the failure to cause Maxwell to implement internal
18 controls and systems of compliance with FCPA.

19 67. The settlement of the FCPA Derivative Action directly damaged
20 Maxwell to the extent of \$3,000,000 in fees and required the Maxwell to implement
21 several corporate governance measures. These measures included the granting of
22 new authority to the Audit Committee:

23 (i) The Audit Committee shall have the authority and responsibility
24 acting by majority vote to take all appropriate action, including notifying
25 the Securities and Exchange Commission ("SEC") if Maxwell fails in
any material respect to implement an appropriate response that the
Committee has recommended that the Company take; and

26 (ii) The Audit Committee shall have the authority to retain an
27 independent law firm, as well as any independent analytic resources
28 deemed beneficial to the Committee.

1 financial statements by signing the Form 10-K and internal control certifications,
2 which stated in relevant part:

3 *Assumptions and Approach Used.* Product revenue is recognized when
4 all of the following criteria are met: (1) persuasive evidence of an
5 arrangement exists (upon contract signing or receipt of an authorized
6 purchase order from a customer); (2) title passes to the customer at either
7 shipment from our facilities or receipt at the customer facility, depending
8 on shipping terms; (3) price is deemed fixed or determinable and free of
9 contingencies or significant uncertainties; and (4) collectability is
10 reasonably assured. Customer purchase orders and/or contracts are
11 generally used to determine the existence of an arrangement. Shipping
documents are used to verify product delivery. We assess whether a
price is fixed or determinable based upon the payment terms associated
with the transaction. If a volume discount is offered, revenue is
recognized at the lowest price offered to the customer. We assess the
collectability of accounts receivable based primarily upon
creditworthiness of the customer as determined by credit checks and
analysis, as well as the customer's payment history.

12 71. In stark contrast to the stipulated facts in the settlement agreements for
13 FCPA actions brought by the SEC and DOJ and the shareholders in the FCPA
14 Derivative Action, the Company's 2011 Form 10-K stated that internal controls over
15 financial reporting were effective as follows:

16 **Management's Annual Report on Internal Control over Financial**
17 **Reporting**

18 Our management is responsible for establishing and maintaining
19 adequate internal control over financial reporting, as such term is defined
20 in Exchange Act Rule 13a-15(f). Under the supervision and with the
21 participation of our management, including our principal executive
officer and principal financial officer, we conducted an evaluation of the
effectiveness of our internal control over financial reporting based on the
framework in *Internal Control—Integrated Framework* issued by the
Committee of Sponsoring Organizations of the Treadway Commission.

22 Because of its inherent limitations, internal control over financial
23 reporting is not intended to provide absolute assurance that a
24 misstatement of our financial statements would be prevented or detected.
25 Also, projections of any evaluation of effectiveness to future periods are
26 subject to the risk that controls may become inadequate because of
27 changes in conditions or because the degree of compliance with policies
or procedures may deteriorate. Based on our evaluation under the
framework in *Internal Control—Integrated Framework*, management
concluded that our internal control over financial reporting was effective
as of December 31, 2011.

1 McGladrey & Pullen LLP, the independent registered public accounting
2 firm that audited the consolidated financial statements of Maxwell in this
3 Annual Report on Form 10-K, has issued an unqualified opinion on the
effectiveness of Maxwell's controls over financial reporting as of
December 31, 2011 which is included in this Item under the heading
"Report of Independent Registered Public Accounting Firm."

4 72. On the same day, after releasing the results for the fourth quarter 2011
5 and the end of year 2011, Maxwell hosted a conference call for analysts, media
6 representatives, and investors in which Defendants Schramm and Royal stated the
7 following:

8 DAVID SCHRAMM: Very good, Mike, thank you very much, and good
9 afternoon, everybody. We're really pleased to report that Maxwell
10 reported total revenue of \$42.5 million for the fourth quarter ended
December 31, 2011. Now, that's up 24% from the same period a year
ago.

11 That growth was driven mainly by strong ultracapacitor sales of \$26.2
12 million. That's up 30% from Q4 of 2010. Sales of our microelectronics
and high-voltage capacitor products came in at \$16.3 million for the
13 quarter, up 16% from last year's fourth quarter. That's higher than usual
for these mature product lines, which both continue to deliver solid
14 contributions to the Maxwell bottom-line.

15 This growth along with continuing cost and efficiency improvements
enable the company to show a net profit of about \$1.5 million for the
16 quarter. On a non-GAAP basis, net profit for Q4 was \$1.7 million, and
this was the seventh consecutive quarter that Maxwell has been
17 profitable on a non-GAAP basis. Total sales for the year came in at
\$157.3 million, up 29% from fiscal 2010. GAAP net income for the full
18 year was nearly \$0.75 million and the net was nearly \$5 million on a
non-GAAP basis. Kevin will provide a little more detail on that in a few
19 minutes.

20 ***

21 KEVIN ROYAL: Thank you, David. I'm going to spend a few minutes
providing some additional information on our 2011 financial results. Our
22 revenues of \$42.5 million for the fourth quarter of 2011 were up 3%
from Q3 2011. The higher revenues in the fourth quarter were driven by
23 a 5% increase in ultracapacitor product sales which generated \$26.2
million in revenues for the quarter.

24 Despite what we believe to be a temporary slowdown in the wind market
through regulatory changes in China, we continue to grow our sales in
25 the bus, auto and uninterrupted power supply market. Revenues from our
microelectronics and high-voltage business were relatively flat compared
26 to Q3 2011.

27 Non-GAAP gross margin was \$16.3 million or 38% of revenues for the
28 fourth quarter of 2011 compared to non-GAAP gross margin of \$16.7

1 million or 41% of revenues for the third quarter of 2011. The decline in
2 non-GAAP gross margin was primarily related to our microelectronics
3 business. In the fourth quarter, we recorded a loss on the sale of 14
4 singleboard computers for a single customer due to significantly higher
than expected manufacturing cost on this particular contract. Non-GAAP
gross margin excludes stock-based compensation expense and
amortization of intangible assets.

5 Total non-GAAP operating expenses for Q4 2011 were \$13.8 million
6 compared with Q3 2011 non-GAAP operating expenses of \$14.6
7 million. Operating expenses were lower in Q4 2011 compared with Q3
8 2011 due to lower spending on legal matters, lower contract R&D
spending and a lower fourth quarter bonus accrual as certain objectives
were not achieved for the full year. Non-GAAP operating expenses
exclude stock-based compensation expense, amortization of intangible
assets and expense associated with an anticipated legal settlement.

9 We reported non-GAAP net income of \$1.9 million or \$0.07 per diluted
10 share for the fourth quarter compared with non-GAAP net income of
11 \$1.2 million or \$0.04 per diluted share for the third quarter of 2011. For
12 the full year, non-GAAP net income was \$4.9 million or \$0.17 per
13 diluted share for 2011 compared with \$1.3 million or \$0.05 per diluted
14 share for 2010. Non-GAAP net income excludes stock-based
compensation expense, amortization of intangible assets, expense
associated with accruals for legal settlement, the gain on embedded
derivatives and warrants in 2010 and the impact of reclassification of
assets from held-for-sale to held-and-used in 2010.

15 Our earnings before interest expense, taxes, depreciation, amortization
16 and stock-based compensation or EBITDA was \$5 million in Q4
17 compared to \$3.4 million in Q3. For the full year, EBITDA was \$11.7
18 million in 2011 compared with \$2.7 million in 2010.

19 Now I'd like to turn to the balance sheet. We ended the quarter with cash
20 and cash equivalent of \$29.3 million, which represents a decrease in cash
of \$1.7 million from Q3 2011. Although we did generate cash from
operations of \$2 million in the fourth quarter, we spent \$3.5 million in
capital investments and also experienced unfavorable effects from
exchange rates on cash of \$500,000.

21 73. Even after Maxwell's large settlements related to inadequate internal
22 controls in the preceding months, on March 19, 2012, Maxwell was selected by
23 Bloomberg New Energy Finance as a 2012 New Energy Pioneer. This award was in
24 part based on the false and misleading statements made by Maxwell during the
25 relevant period. Much of the "momentum" referred to below was based on inaccurate
26 financial data. According to the press release, the program is described as follows:

27 The Bloomberg New Energy Finance Pioneers program identifies
28 companies from around the world that are changing the energy

1 landscape forever. An independent panel of industry experts from
2 banking, academia, corporations, utilities and technology providers
chose the honorees by assessing them against three criteria: potential
scale, innovation and momentum.

3 74. On April 6, 2012 Defendant Kreigler resigned from his position as Chief
4 Operating Officer of Maxwell. As part of his separation agreement, the Company
5 agreed to pay Defendant Kreigler a lump sum severance payment of \$190,670.08,
6 which is equal to seven months of his base salary, pay COBRA premiums under the
7 Company's health care plan on Defendant Kreigler's behalf for six months, and
8 provide continued vesting of certain stock options for six months. Defendant
9 Kreigler departed from the Company shortly after the settlements regarding improper
10 internal controls with regard to the FCPA. His severance pay was another direct
11 damage to the Company as a result of its lack of adequate internal controls over
12 financial accounting. From April 6, 2012 to the present, Maxwell has conducted
13 business without a Chief Operating Officer.

14 75. On April 26, 2012, Defendant Schramm, with the knowledge and
15 explicit approval of Defendants Guyett, Jorden, and Rossi, caused Maxwell to issue a
16 press release announcing first quarter 2012 financial results. The Company reported
17 net income of \$504,000, or \$0.02 diluted EPS, and revenue of \$39.2 million for the
18 first quarter ended March 31, 2012. The release stated in part:

19 "Ultracapacitor revenue was down sequentially from Q4, due in part to
20 seasonal factors, including the Chinese New Year observance," said
David Schramm, Maxwell's president and chief executive officer.
21 "Continued demand for ultracapacitor-based energy storage systems to
power hybrid electric transit buses helped to offset softness in other
22 applications. That, along with ongoing order flow for backup power
applications and stop-start idle elimination systems in micro hybrid autos
23 enabled us to sustain year-over-year growth."

24 * * *

25 "We expect revenue to increase by 4 to 7 percent sequentially in the
current second quarter compared with that reported in the first quarter,"
26 Schramm said. "On the basis of reduced forecasts from customers in
Europe and elsewhere, we now anticipate top line growth for the full
27 year to be in the range of 15 to 20 percent, and continuing solid
operating performance should enable the company to be profitable on a
28 non-GAAP basis."

1 76. On the same day, after releasing the results for the first quarter 2012,
2 Maxwell hosted a conference call for analysts, media representatives, and investors in
3 which Defendants Schramm and Royal stated the following:

4 DAVID SCHRAMM: Maxwell recorded total revenue of \$39.2 million
5 for the first quarter ended March 31, 2012. Now, that's up 11% from the
6 same period a year ago. That growth was driven not only by
7 ultracapacitor sales of \$22 million, which is up 3% from Q1 '11, but also
8 by unusually strong sales of microelectronics and high-voltage capacitor
9 products, which came in at \$17.2 million, which is up 24% from last
10 year's first quarter.

11 This growth, along with continuing cost and efficiency improvements,
12 enabled the company to show a net profit of about \$500,000 for the
13 quarter. On a non-GAAP basis, net profit for Q1 was \$1.8 million.

14 Now, this was the eighth consecutive quarter that Maxwell has been
15 profitable on a non-GAAP basis. Kevin's going to provide some more
16 financial details on this in a few minutes. As noted in our press release,
17 ultracapacitor sales were lower sequentially compared with the fourth
18 quarter. This was mainly due to normal seasonal factors including the
19 Chinese New Year observance, which effectively shuts down business
20 across much of Asia for two to three weeks every year.

21 ***

22 KEVIN ROYAL: Thank you David. I'm going to spend a few minutes
23 providing some additional information on our first quarter 2012 financial
24 results.

25 Our revenues were \$39.2 million for the first quarter of 2012, down 8%
26 from Q4 2011. The ultracapacitor product line sales declined by 16%,
27 compared with Q4 2011. The Chinese New Year holiday and overall
28 historical seasonal softness typically impact our top line results in the
first quarter of each year. In addition, we experienced some minor
slowing in Europe during the quarter, and we have received feedback
from European customers that the slowing may continue for the
foreseeable future.

As a result, we have modified our revenue expectations for the full year
to a range of 15-20% overall revenue growth for 2012. While our
ultracapacitor product sales were down, our microelectronics product
sales grew by 21% compared with Q4 2011, and revenues from our high
voltage products remain flat quarter over-quarter.

Non-GAAP gross profit was \$16.3 million in both the first quarter and
Q4 2011. As a percentage of revenue, non-GAAP gross profit was 41%
of revenues for the first quarter of 2012, compared to 38% of revenues
for the fourth quarter of 2011.

In the current quarter, non-GAAP gross profit was positively impacted
by favorable product mix associated with increased contribution from

1 our high voltage and microelectronics products. In addition, in the fourth
2 quarter of 2011 we recorded a loss on the sale of 14 single board
computers with our microelectronics product line, which negatively
impacted our gross profit rate.

3 We expect gross profit to decline in Q2 2012 to approximately 39%, due
4 to product mix, and then return to target levels of 40% or above for the
remainder of the year. Total non-GAAP operating expenses for Q1 2012
5 were in line with the prior sequential quarter, totaling \$13.7 million for
Q1 2012 compared with \$13.8 million for Q4 of 2011.

6 We expect non-GAAP operating expenses to grow by a range of
7 \$800,000 to \$1 million in Q2 2012 and to further increase in Q3 and Q4
to a run rate of approximately \$16 million in support of our forecasted
8 revenue increase in the latter half of the year.

9 Non-GAAP net income was \$1.8 million, or \$0.07 per diluted share, for
the first quarter, compared with non-GAAP net income of \$1.9 million,
10 or \$0.07 per diluted share, for the fourth quarter of 2011. Non-GAAP net
income excludes stock based compensation expense and amortization of
11 intangible assets.

12 Our earnings before interest expense, taxes, depreciation, and
amortization, or EBITDA, was \$4.4 million in Q1 compared to \$5
13 million in Q4.

14 Now I'd like to turn to the balance sheet. We ended the quarter with cash
of \$30.6 million, which represents an increase in cash of \$1.3 million
15 from Q4 2011. The significant components of our cash activity for the
quarter include \$10.3 million raised under our shelf registration
16 statement, \$5 million in net borrowings, \$5.5 million in settlement
payments made to the SEC and DOJ, capital spending of \$4.1 million,
17 and a combined increase in accounts receivable and inventories of \$9.8
million.

18 The increase in accounts receivable was primarily due to an increase in
19 day's sales outstanding and the increase in inventory that's associated
with anticipated future product demand. In addition, accounts receivable
20 include the \$2.9 million insurance receivable from our D&O insurance
carrier at the end of Q4 2011 and Q1 2012, related to the derivative
21 lawsuit which was paid to the plaintiff's attorneys in the second quarter
and will not be included in accounts receivable at the end of Q2 2012.
22 We have one remaining payment to the DOJ of \$2.25 million related to
the FCPA matter, which is fully accrued and will be paid in the first
23 quarter of 2013.

24 During the quarter, we generated \$10.3 million in net proceeds from the
sale of approximately 573,000 shares of Maxwell's common stock, at an
25 average price of \$18.60. As previously announced, we had entered into
an at the market equity offering sales agreement with Citadel Securities
26 LLC in February 2012, under which we may offer and sell up to \$30
million in shares of our common stock. We expect to continue to
27 opportunistically sell shares under this program in future quarters.
28

1 In addition, during the quarter we drew down \$5 million from our credit
2 facility to fund recent capital expenditures as we continue to focus on
expanding our production capacity.

3 77. Following this disclosure of disappointing results, Maxwell's stock
4 declined from \$15.80 per share to as low as \$8.81 per share before closing at \$9.60
5 per share, on volume of 7.29 million shares. However, Maxwell's stock continued to
6 trade at artificially inflated levels as defendants continued to conceal the Company's
7 improper revenue recognition and deficient internal controls.

8 78. On April 26, 2012, Maxwell filed its first quarter 2012 Form 10-Q with
9 the SEC. Defendants Schramm and Royal once again affirmed their duties to
10 maintain adequate internal controls over financial reporting and to insure the
11 accuracy of the financial statements by signing the Form 10-Q and internal control
12 certifications.

13 79. On May 10, 2012, Maxwell entered into a global distribution agreement
14 with Digi-Key Corporation. In the press release, Defendant Andrews expressed
15 excitement at the internet platform for global sales that Digi-Key would provide the
16 Company.

17 80. On August 2, 2012, Defendant Schramm, with the knowledge and
18 explicit approval of Defendants Guyett, Jorden, and Rossi, caused Maxwell to issue a
19 press release announcing its second quarter 2012 financial results. The Company
20 once again reported inflated net income of \$2.7 million, or \$0.09 diluted EPS, and
21 revenue of \$40.9 million for the second quarter ended June 30, 2012. The release
22 stated in part:

23 "Slowing demand in Europe has impacted ultracapacitor revenue growth
24 through the first half of the year, and the outlook there remains
25 uncertain," said David Schramm, Maxwell's president and chief
26 executive officer. "On the plus side, careful expense controls, strong
27 demand for ultracapacitor products for hybrid electric transit buses and
28 wind turbine blade pitch systems in China and steady performance by
our high voltage and microelectronics groups have enabled us to
continue growing and improving bottom line performance in a difficult
economic environment."

* * *

“Based on current order flow and customer forecasts in our core ultracapacitor market segments, we expect sequential top line growth of seven to 10 percent in the third quarter,” Schramm said. “That should keep us on track to achieve growth in the range of 15 to as much as 20 percent for the full year and support ongoing improvement in operating performance.”

81. On August 2, 2012, Maxwell filed its second quarter 2012 Form 10-Q with the SEC. As usual, Defendants Schramm and Royal affirmed their duties to maintain adequate internal controls over financial reporting and to insure the accuracy of the financial statements by signing the Form 10-Q and internal control certifications.

82. On the same day, after releasing the results for the first quarter 2012, Maxwell hosted a conference call for analysts, media representatives, and investors in which Defendants Schramm and Royal stated the following:

DAVID SCHRAMM: We’re pleased to report that Maxwell recorded total revenue of \$40.9 million of the second quarter into June 30th, 2012. Well, that’s 12% sequentially from the first quarter and up 6% from the same quarter a year ago.

Ultracapacitor sales totaled \$24.2 million, up 10% sequentially from the first quarter, but down slightly from the second quarter of 2011 due mainly to continuing soft demand in Europe. Second quarter sales of microelectronics and high voltage capacitor products came in at \$16.7 million, down a bit from the unusually high sales posted in the first quarter, but up 19% from last year’s second quarter.

A particular note is that despite the challenging global economic environment, a favorable revenue mix and careful expense control enable the company to post net income of \$2.7 million or \$0.09 per share for the quarter. That compares with the loss of \$0.04 per share in the same period last year. On a non-GAAP basis, net profit for Q2 was \$3.5 million or \$0.12 per share compared with \$0.06 per share in Q2 last year.

Now, this was the ninth consecutive quarter the company has been profitable on a non-GAAP basis. And Kevin is going to provide you more financial details on all of this in a few minutes.

KEVIN ROYAL: Thank you, David. I’m going to spend a few minutes providing some additional information on our second quarter 2012 financial results.

1 Our revenues were \$40.9 million for the second quarter of 2012, up 4%
2 from Q1 2012. The higher revenues in the second quarter were driven by
3 a 10% sequential increase in ultracapacitor product sales. It generated
\$24.2 million in revenues for the quarter. Continued strong demand for
ultracapacitor products for hybrid electric vehicles in wind turbine blade
fit systems were the main drivers of this quarter's growth.

4 We continued to experience slowing demand in Europe during the
5 quarter, which we believe may continue for the foreseeable future.
6 Revenues from our microelectronics business were down slightly this
7 quarter, while our high-voltage product revenues were essentially flat
compared to Q1 2012. Based on current order flow and customer
forecast we now expect revenue for the full year to be in a range of 15%
to as much as 20%.

8 Non-GAAP gross profit was \$17.3 million in the second quarter of 2012
9 compared to \$16.4 million in Q1 of 2012. As a percentage of revenue,
10 non-GAAP gross profit was 42% of revenues for the second quarter of
2012 compared to 41% of revenues for the first quarter of 2012. The
11 increase in gross margin is due primarily to product mix as well as
continuing cost reductions for ultracapacitor products.

12 Total non-GAAP operating expenses for Q2 2012 were \$12.9 million,
13 down from \$13.7 million for Q1 2012. Although we had anticipated non-
GAAP operating expenses to grow by a range of \$800,000 to a \$1
14 million in Q2 2012, expense control measures have allowed us to
decrease our overall spending. We expect a quarterly run rate of \$14.5
15 million for non-GAAP operating expenses for Q3, increasing to
approximately \$15.5 million in Q4 in support of our forecasted revenue
increase in those quarters.

16 Non-GAAP net income was \$3.5 million or \$0.12 per diluted share for
17 the second quarter compared with non-GAAP net income of \$1.9 million
or \$0.07 per diluted share for the first quarter of 2012. These non-GAAP
18 measures exclude stock-based compensation expense and amortization
of intangible assets. Our earnings before interest expense, taxes,
19 depreciation and amortization or EBITDA was \$5.2 million in Q2
compared to \$3.2 million in Q1.

20 Now I'd like to turn to the balance sheet. We ended the quarter with cash
21 of \$22.3 million, which represents a decrease in cash of \$8.3 million
from Q1 2012. The significant components of our cash activity for the
22 quarter included increase in accounts receivable, a \$5.6 million in capital
spending of \$4.2 million. The increase in accounts receivable is
23 primarily attributable to shipment linearity, where a significant portion
of the quarter sales were shipped in the third month of the quarter and
24 also to a few significant customer accounts that are past due but which
we expect to collect.

25 We expended \$4.2 million in capital investments during the quarter as
26 we continue to invest in capacity expansion and product development for
ultracapacitor products. As of June 30, 2012, we have \$10.3 million in
27 debt obligations outstanding. This debt balance consists of an equipment
term loan of \$4.9 million and debt of \$5.4 million held by our Swiss
28 subsidiary, which has favorable borrowing terms.

1 83. On August 14, 2012, Defendant Royal spoke at the Canaccord Genuity
2 32nd Annual Growth Conference. Defendant Royal gave several false and
3 misleading statements about the Company's revenue, including:

4 So, first of all, a little bit about Maxwell. Today the company consists of
5 three different product groups, ultracapacitors, our microelectronics
6 product group and our high-voltage capacitors. And we'll spend just a
7 little bit of time on microelectronics and high-voltage. But the majority
8 of this presentation will be focused on our growth area which is
9 ultracapacitors.

10 So first, our high-voltage capacitors, these are very large devices that are
11 used in power distribution and transmission applications. These are
12 designed and manufactured by our wholly owned subsidiary in Rossens,
13 Switzerland, and our revenues for 2011 were just a bit north of \$42
14 million.

15 Our microelectronics product group, these are electronics components in
16 single-board computers that are designed and built to withstand the harsh
17 effects of space environments. So, they're basically radiation-mitigated
18 parts that allow them to withstand the radiation effects of flying in
19 satellites and other space applications. This is a niche product, very
20 profitable for the company, and our revenues in 2011 were \$18 million
21 for these products.

22 So, as I mentioned, ultracapacitors will be the focus of the presentation.
23 This is the growth area for the company. Today, we're in many
24 applications and that list continues to grow. We'll cover some of these
25 applications a little bit later in the presentation. Our revenues for this
26 product group in 2011 were \$97 million.

27 84. On October 2, 2012, Maxwell announced that Automobili Lamborghini
28 S.p.A, commonly known as Lamborghini, would incorporate Maxwell ultracapacitors
into its stop-start-idle-elimination system in all of Lamborghini's Aventador cars to
be built in late 2012.

85. On October 25, 2012, Defendant Schramm, with the knowledge and
explicit approval of Defendants Guyett, Jorden, and Rossi, caused Maxwell to issue a
press release announcing the Company's third quarter 2012 financial results. The
Company reported net income of \$5.4 million, or \$0.19 diluted EPS, and revenue of
\$43.9 million for the second quarter ended June 30, 2012.

86. On October 30, 2012, Maxwell filed its third quarter 2012 Form 10-Q with the SEC. Defendants Schramm and Royal made the decision, which could not have been the product of valid business judgment because it was inaccurate, based on improper accounting, and the product of inadequate internal controls over financial reporting, to sign the Form 10-Q, which referred to Maxwell's Form 10-K for the year ended December 31, 2011, as well as to the Company's accounting policies. The Form 10-Q further stated in part, emphasis added:

We are committed to maintaining disclosure controls and procedures designed to ensure that information required to be disclosed in our periodic reports filed under the Securities and [sic] Exchange Act of 1934 (the "Exchange Act") is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Principal Executive Officer and Principal Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure.

Under the supervision and with the participation of our management, including our Principal Executive Officer and Principal Financial Officer, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of September 30, 2012, as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act. Based on this evaluation, our Principal Executive Officer and Principal Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Quarterly Report on Form 10-Q.

87. Based on the inaccurate financial statistics included in the statements listed above made during the Relevant Period, on February 13, 2013, the Compensation Committee of the Board of Directors of Maxwell once again approved increases in the base salaries and cash bonuses for Maxwell's named executives. Defendants Guyett, Howsmon, and Rossi (Chairman) were members of the Compensation Committee and explicitly approved these decisions. The Compensation Committee increased Defendant Schramm's base salary from \$512,325 to \$530,555; additionally the Committee awarded him 33,896 RSA as long-term incentive awards and a targeted bonus of \$530,555. The Compensation Committee increased Defendant Royal's base salary from \$322,922 to \$334,413 and

1 awarded him 15,046 RSA as long-term incentive awards and a \$167,207 targeted
 2 bonus. The Compensation Committee increased Defendant Andrews' base salary
 3 from \$277,200 to \$287,064 and awarded him 12,188 RSA as long-term incentive
 4 awards and a \$143,532 targeted bonus. Due to the problems with the filing of the
 5 Form 10-K for the year ending December 31, 2012 and the impending announcement
 6 less than a month later of incorrect financial statements and a material weakness in
 7 internal controls over financial reporting, the Compensation determined to no
 8 payment of cash bonuses would be made to the named executive officers under the
 9 Company's 2012 incentive bonus plan.

10 88. The Compensation Committee increased the base salaries based on its
 11 authority set out in the Compensation Committee Charter.

12 89. The Compensation Committee approved the targeted bonuses for
 13 Defendants Schramm, Royal, and Andrews under the Company's 2013 incentive
 14 bonus plan, which has identical terms to the 2012 bonus plan.

15 90. All of the awards granted on February 13, 2013 were based on the
 16 financial statements released during the Relevant Period, which Maxwell has now
 17 publicly stated are not to be relied upon. The payment of this additional, unearned,
 18 incentive based compensation to the Officer Defendants directly damaged Maxwell.

19 **The Truth is Revealed**

20 91. Then, on March 7, 2013, after the market closed, the truth was revealed
 21 when Maxwell issued a press release disclosing that the Company would be restating
 22 previously issued financial statements for 2011 and most of 2012 due to errors related
 23 to the timing of recognition of revenue from sales to certain distributors. The
 24 Company further disclosed that the financial statements for 2011 and 2012 should no
 25 longer be relied upon. The release stated in part, emphasis added:

26 Maxwell Technologies, Inc. announced today that on March 1, 2013, the
 27 audit committee of its board of directors concluded that the *previously*
 28 *issued financial statements contained in its annual report on Form 10-*
K for the year ended December 31, 2011, and all unaudited quarterly

1 **reports on Form 10-Q in 2011 and 2012** (collectively, the “Prior
2 Periods”), as well [sic] its selected financial data for the related periods,
3 **should no longer be relied upon because of errors in those financial**
4 **statements.** The errors relate to the timing of recognition of revenue
5 from sales to certain distributors.

6 In addition to the financial statements for the Prior Periods, related press
7 releases furnished on current reports on Form 8-K, reports and
8 stockholder communications describing its financial statements for the
9 Prior Periods and the report of its independent registered public
10 accounting firm, McGladrey LLP (formerly McGladrey & Pullen, LLP),
11 related to the year ended December 31, 2011, should no longer be relied
12 upon.

13 The conclusion that the financial statements for the Prior Periods cannot
14 be relied upon is the result of an investigation by Maxwell’s audit
15 committee, with the assistance of independent outside counsel and
16 forensic accountants. The investigation commenced following receipt of
17 information concerning potential recognition of revenue prior to the
18 satisfaction of certain of the criteria required to be met to recognize
19 revenue.

20 The investigation discovered arrangements with certain distributors
21 regarding the payment terms for sales to such distributors with respect to
22 certain transactions. These arrangements had not been communicated to
23 Maxwell’s finance and accounting department and, therefore, had not
24 been considered when recording revenue on shipments to these
25 distributors. Based on the terms of the agreements with these distributors
26 as they were known to the finance and accounting department, it had
27 been the policy to account for revenue related to shipments to these
28 distributors as title passed to the distributor at either shipment from
Maxwell’s facilities or receipt at the distributor’s facility, assuming all
other revenue recognition criteria had been achieved. As a result of the
arrangements discovered during the investigation, Maxwell does not
believe that a fixed or determinable sales price existed at the time of
shipment to these distributors, nor was collection reasonably assured, at
least with respect to certain transactions. Therefore, the revenue from
such sales should not have been recognized at the time of shipment to
these distributors.

Maxwell believes that the impact to the Prior Periods of correcting the
errors in revenue recognition related to sales transactions to these
distributors will be to decrease previously reported revenues and profits
for 2011 and the first three quarters of 2012, and to increase revenue and
profits by the same amounts in subsequent periods.

Maxwell believes that the restatement of revenue related to these
distributors will decrease previously reported revenues for fiscal year
2011 by approximately \$6.5 million and decrease revenues in the first
three quarters of 2012 by approximately \$5.5 million in the aggregate.

Maxwell also believes that the restatement of revenue related to these
distributors will result in shipments to these distributors for which title
has passed to the distributor, but for which the revenue recognition
criteria has not been fully achieved, of approximately \$12.0 million as of

1 September 30, 2012. Of the shipments to these distributors that had not
2 been collected as of September 30, 2012, and therefore not recognized as
3 revenue, Maxwell collected \$4.6 million in the fourth quarter of 2012
4 and \$3.0 million to date in the first quarter of 2013, leaving \$4.4 million
5 outstanding that will be recognized as revenue as Maxwell receives
6 payments in the future.

7 ***Maxwell is in the process of evaluating deficiencies in its internal***
8 ***controls over financial reporting and have preliminarily concluded***
9 ***that it has material weaknesses in its internal controls over financial***
10 ***reporting related to the identification and evaluation of revenue***
11 ***transactions which deviate from contractually established payment***
12 ***terms and therefore has preliminarily concluded that its internal***
13 ***controls over financial reporting and disclosure are not effective.***
14 Maxwell intends to design and implement controls to remediate these
15 deficiencies.

16 As a result of the investigation, certain employees were terminated and
17 Maxwell's Sr. Vice President of Sales and Marketing resigned.

18 The Company, including the audit committee, has discussed the
19 foregoing matters with Maxwell's independent registered public
20 accounting firm, McGladrey LLP. The audit committee has authorized
21 and directed the officers of the Company to take the appropriate and
22 necessary actions to restate its financial statements for the Prior Periods.
23 Maxwell intends to file restated financial statements for the Prior Periods
24 as soon as reasonable practicable.

25 92. The Company further disclosed in a Form 8-K filing on March 7, 2013
26 that Defendant Andrews had resigned from his position as Senior Vice President of
27 Sales and Marketing, effective March 1, 2013, as a direct result of the ongoing
28 investigation being performed by the Audit Committee and Maxwell's Board of
Directors into the wrongdoing contained herein.

93. Thus, for the first time, the Company revealed several key facts,
including: the inaccuracy of its previous two years of financial reports, the inaccuracy
of its independent audits, the lack of discernible sales price for transactions that took
place with several distributors and the resulting improper recognition of revenue, and
that its internal controls over financial reporting were inadequate.

94. Upon disclosure of the true facts, the Company's stock price dropped
\$1.01 per share on March 8, 2013 to close at \$8.10 per share, a one-day decline of

1 11% on volume of 1.7 million shares. A decline of 62% from the Relevant Period
2 high price of \$21.20 per share.

3 95. The true facts, which were known by the Individual Defendants but
4 concealed from the investing public during the Relevant Period, included:

5 (a) Maxwell had overstated its revenues and earnings in 2011 and
6 2012 in violation of GAAP.

7 (b) Maxwell had reported revenues prior to the time the sales price
8 was fixed and/or collection was reasonably assured.

9 (c) Maxwell's internal accounting controls were deficient and
10 permitted the premature recognition of revenue, leading to materially misstated
11 financial results.

12 96. As a result of the Individual Defendants' false and misleading
13 statements, Maxwell common stock traded at artificially inflated prices during the
14 Relevant Period. However, after the above-alleged revelations of the true but
15 undisclosed facts seeped into the market, the Company's common stock experienced
16 exorbitant selling pressure sending its price down nearly 62% from its Relevant
17 Period high.

18 97. On March 19, 2013 Maxwell determined that it was unable to file with
19 the SEC its annual report on Form 10-K for the year ended December 31, 2012 within
20 the prescribed time period without unreasonable effort or expense.

21 98. Additionally, as of April 9, 2013, based on the foregoing facts the
22 corporate governance analysis subscription service GMI Analyst gives Maxwell's
23 Board a "C" rating for governance. The key factors listed for this rating are the
24 Company's prior accounting investigations and other high impact events including
25 recent year's FCPA settlements, the Securities Class Action, and the overall
26 inadequacy of internal controls at the Company.

1 99. While it reached a Relevant Period high stock price of \$21.20 per share
2 on November 4, 2011, Maxwell is currently trading around \$5 per share. This is
3 despite entering into numerous high-profile lucrative contracts with distributors and
4 manufacturers. The stock price remains low due in large part to the lack of investor
5 confidence in the Company due to its inadequate internal controls over financial
6 accounting and loss of goodwill due to the issuance of false and misleading
7 statements. If the Individual Defendants had instituted a proper system of internal
8 controls, issued accurate statements, and the accounting were proper throughout the
9 Relevant Period, it is very likely that Maxwell would be doing quite well, but because
10 of the Individual Defendants' breaches of fiduciary duties, the Company is in a much
11 weaker position.

12 **DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS**

13 100. Plaintiff brings this action derivatively in the right and for the benefit of
14 Maxwell to redress injuries suffered, and to be suffered, by Maxwell as a direct result
15 of breaches of fiduciary duty, waste of corporate assets, and unjust enrichment.

16 101. Plaintiff will adequately and fairly represent the interests of the
17 Company and its shareholders in enforcing and prosecuting its rights.

18 102. Maxwell is named as a nominal defendant in this case solely in a
19 derivative capacity. This is not a collusive action to confer jurisdiction on this Court
20 that it would not otherwise have. Plaintiff is and was a shareholder of Maxwell at the
21 time of the transgressions complained of. Plaintiff will adequately and fairly
22 represent the interests of Maxwell and its shareholders in enforcing and prosecuting
23 their rights. Prosecution of this action, independent of the current Board of Directors,
24 is in the best interests of the Company.

25 103. The wrongful acts complained of herein subject, and will continue to
26 subject, Maxwell to continuing harm because the adverse consequences of the actions
27 are still in effect and ongoing.

1 104. The wrongful acts complained of herein were unlawfully concealed from
2 Maxwell's shareholders.

3 105. Throughout the Relevant Period, the Individual Defendants violated
4 multiple corporate governance principles, thus representing evidence of the
5 Individual Defendants' breaches of fiduciary duties. The course of action related
6 misrepresenting the financial integrity of the Company, and caused the Individual
7 Defendants to breach the following corporate principles, among others:

- 8 • Directors, officers and employees are prohibited from illegally trading
9 the Company's securities while in possession of material, nonpublic
10 ("inside") information about the Company;
- 11 • comply with United States generally accepted accounting principles at
12 all times;
- 13 • maintain books and records that accurately and fairly reflect the
14 Company's transactions; and
- 15 • maintain a system of internal controls that will provide reasonable
16 assurances to management that material information about the Company
17 is made known to management, particularly during the periods in which
18 the Company's periodic reports are being prepared.

19 106. As a result of the facts set forth herein, Plaintiff has not made any
20 demand on the Maxwell Board to institute this action since such demand would be a
21 futile and useless act because the Board is incapable of making an independent and
22 disinterested decision to institute and vigorously prosecute this action. The wrongful
23 acts complained of herein show a wholesale abandonment by the Individual
24 Defendants of their fiduciary duties of due care and oversight. Such abandonment
25 includes, but is not limited to the following:
26
27
28

- 1 a) Allowing for materially inadequate controls over the Company's policies
2 and practices with respect to accounting for inherent corporate value,
3 goodwill, and asset valuations;
- 4 b) Allowing the Company's financial statements to be artificially inflated;
5 and
- 6 c) Allowing the Company to fail to disclose pertinent, material, and
7 important information in a timely manner.

8 107. At the time this action was commenced, the Board consisted of eight
9 directors: non-Defendants Jean Lavigne, Burkhard Goeschler, and Jose L. Cortes and
10 Defendants Schramm, Guyett, Rossi, Jorden, and Howsmon.

11 108. A majority of the Board is incapable of disinterestedly and
12 independently considering a demand to commence and vigorously prosecute this
13 action for the following reasons:

- 14 a) Defendants Schramm, Guyett, Rossi, Jorden, and Howsmon are
15 substantially likely to be held liable for breaching their fiduciary duties
16 and wasting corporate assets by issuing false and misleading statements
17 and maintaining inadequate internal controls over financial reporting as
18 complained of herein.
- 19 b) Defendant Schramm has served as a director as well as Maxwell's
20 President and CEO since July 2007. Because he is both an officer and a
21 director he is an insider in the corporation. He is the primary individual
22 responsible for the wrongdoing alleged in the Securities Class Action
23 (*See Foster v. Maxwell Tech., Inc., et al*, 3:13-CV-00580-H-RBB (S.D.
24 Cal., filed Mar. 13, 2013)). He also was inseparably tied to all of the
25 false and misleading statements made by Maxwell. As CEO, he had a
26 specific duty to ensure the accuracy of the financial statements and
27 signed each of the public filings and a certification of internal controls
28

1 relating to each. Schramm is not disinterested because it is very likely
2 that he will be held liable in any action brought on behalf of the
3 corporation for his alleged wrongdoing. During the relevant period,
4 Schramm received compensation in the form of \$1,578,400 in total
5 compensation in 2011 and is slated to receive at minimum his base
6 salary of \$512,325 for 2012 plus bonuses of \$400,000 incentive based
7 annual bonus, 37,240 RSA as long-term incentive awards, and a targeted
8 bonus of \$512,325. The actual total final 2012 numbers have not yet
9 been disclosed because the Company has not yet filed its 2012 Annual
10 Report on Form 10-K nor its 2013 proxy statement due to the fact that its
11 financial statements during the Relevant Period can no longer be relied
12 upon and need to be restated. Defendant Schramm owns 363,164 shares
13 of Maxwell stock, accounting for 1.25% of the total shares outstanding.
14 Due to his extensive compensation and stock holdings, he is entrenched
15 in the Company.

16 109. Defendants Guyett, Jorden, and Rossi all served as members of the Audit
17 Committee during the Relevant Period. Defendant Guyett was and continues to be
18 the Chairman of the Audit Committee. According to the Audit Committee Charter,
19 Defendants Guyett, Jorden, and Rossi had the specific duty to oversee all material
20 aspects to the Company's reporting, control, and audit functions. Because they
21 breached that duty, there is a high likelihood that they will be held personally liable in
22 any litigation brought on behalf of the corporation. It is for this reason among others
23 that the members of the Audit Committee are not disinterested and cannot reasonably
24 decide whether to bring litigation against themselves on behalf of the corporation.
25 Defendant Howsmon was a director throughout the relevant period. He is not
26 disinterested because he has been a director since 2008 and approved each of the acts
27 that are the subject of this litigation. During his time as a director of Maxwell he has
28

1 received \$344,700 in total compensation and maintained extensive social
2 relationships with the other officers and directors named as Defendants herein. He
3 also owns 29,997 shares of Maxwell stock. Additionally, Defendant Howsmon,
4 along with Defendants Guyett and Rossi, was a member of the Compensation that
5 approved the improper raises and incentive based bonuses for each of the Officer
6 Defendants.

7 110. During the Relevant Period the Individual Defendants caused or allowed
8 the Company to fail to maintain proper internal accounting controls and to issue false
9 and misleading statements regarding the same. The Individual Defendants'
10 misconduct has severely damaged the Company. The Company has been forced to
11 pay costly settlements relating to improper internal controls in the area of FCPA
12 during the Relevant Period and now faces a lawsuit alleging violations of the federal
13 securities laws. Further, and more importantly, Maxwell's reputation and goodwill
14 have been tainted by the misconduct described herein.

15 111. As detailed above, the Board members were directly involved in the
16 misconduct challenged in this action, by virtue of their respective positions on the
17 Board and its Committees, or they completely abdicated their responsibility to
18 oversee the Company's operations and let management run roughshod over the
19 Company for their personal gain and causing the Company to engage in illegal and/or
20 improper conduct that rendered the Company's public disclosures misleading,
21 destroying in their wake, much of the Company's shareholder value. The
22 Defendants' conduct lacked any legitimate business purpose and was not a product of
23 a valid exercise of business judgment. As such, demand is excused as futile.

24 112. In addition, Defendant Schramm will take no action against the
25 remainder of the Maxwell Board, and they will take no action against him, because
26 Defendant Schramm was CEO, President, and director of Maxwell. As CEO,
27 Defendant Schramm was compensated handsomely throughout the Relevant Period,
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1 despite continued breaches of fiduciary duties. Due to his compensation package,
2 awarding Schramm with millions of dollars, he will take no action against the
3 remaining Maxwell directors. Therefore, demand as to Defendant Schramm is
4 excused as futile.

5 113. Defendant Schramm will also take no action against the other members
6 of the Board of Directors because he, together with several other former and current
7 executives of Maxwell being sued herein, was directly responsible for the illegal acts
8 and practices complained of herein, thus any pursuant demand upon the members of
9 the Board of the Company to take the actions requested by Plaintiff herein must
10 necessarily be excused. Moreover, by virtue of their respective positions on the
11 Board, all the Defendants either knew of should have known about the Company's
12 disregard for GAAP. Therefore, a majority of the Board are either directly
13 responsible for the Company's practices or were derelict in carrying out the express
14 oversight duties with which they were charged. As such, demand is excused as futile.
15 During the Relevant Period, the Audit Committee consisted of Defendants Guyett
16 (Chair), Jorden, and Rossi. The Audit Committee Charter charges its members with
17 reviewing the adequacy and effectiveness of the Company's accounting and internal
18 controls policies and procedures. Thus, Defendants Guyett, Jorden, and Rossi were
19 expressly responsible for ensuring that Maxwell did not have material weaknesses in
20 its accounting controls. In addition, the Audit Committee is responsible for ensuring
21 that Maxwell complies with all laws and regulations that have a material impact on
22 the Company's financial statements. Defendants Guyett and Jorden both have
23 extensive experience in positions of financial management and oversight. Defendant
24 Guyett is licensed as a CPA. In fact, on its definitive proxy statements filed with the
25 SEC in the years 2010, 2011, and 2012, Maxwell stated "Mr. Guyett and Ms. Jorden
26 have been designated by the Board as the Audit Committee's financial experts."
27 Despite their experience, duties, and responsibilities, the members of the Audit
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1 Committee failed to ensure that the Board had adequate corporate governance
2 policies in place to prevent the wrongdoing alleged herein. As such, Defendants
3 Guyett, Rossi, and Jorden face a substantial threat of liability and cannot fairly
4 consider a demand to commence litigation.

5 114. Furthermore, Defendants Guyett (Chair), Jorden, and Rossi, as the
6 current members of the Audit Committee, Defendant Schramm as President, CEO,
7 and director, and Defendant Royal as CFO of Maxwell, during the Relevant Period
8 were responsible for ensuring that the Company's internal controls over compliance
9 and financial reporting were adequate and that the Company's quarterly and annual
10 financial statements were accurate. Thus, the Audit Committee was directly
11 responsible for approving, and the President, CEO and CFO as a signatory to, the
12 Company's failure to comply with accounting principles and to issue materially
13 false and misleading financial statements. Therefore, there is significant doubt that
14 these Defendants are disinterested because they face a substantial likelihood of
15 liability for their breaches of fiduciary duties, including their duties of good faith, fair
16 dealing and loyalty, as well as other violations of law. As such, the Defendants
17 Schramm, Guyett, Rossi, and Jorden are not disinterested or independent, and are not
18 capable of responding adequately to a demand. Demand on them is therefore excused
19 as futile.

20 115. In addition, by its Board Guidelines, the entire Board is "expected to
21 promote the best interests of the Company's stockholders in terms of corporate
22 governance, fiduciary responsibilities, risk management, compliance with applicable
23 laws and regulations, and maintenance of accounting, financial and other internal
24 controls." Further, "[i]n discharging their responsibilities, directors should be able to
25 rely on the honesty and integrity of the Company's senior management and expert
26 legal, accounting, financial and other advisors."

1 116. Similarly, the Company's Code of Business Conduct and Ethics requires
2 all of Maxwell, including the Board, to "ensure that no false or intentionally
3 misleading entries are made in Maxwell's accounting records. Intentional
4 misclassification of transactions regarding accounts, departments, or accounting
5 periods violate the law and the Code."

6 117. Indeed, the adoption of the Sarbanes-Oxley Act also placed significant
7 additional responsibilities on the Board of Directors of Maxwell, to improve
8 corporate financial, accounting and internal controls, and to improve corporate
9 financial responsibility and disclosure. Thus, despite the Maxwell Board's public
10 posture of concern over good corporate governance, controls, disclosure integrity and
11 overall compliance with the Sarbanes-Oxley act, in fact, at all relevant times, the
12 Individual Defendants had caused or allowed the falsification of the Company's
13 reported financial results. Any real compliance with Sarbanes-Oxley, would have
14 exposed the Individual Defendants' scheme, brought it to an end and resulted in
15 embarrassing discharges and disclosures. Thus, the Board of Maxwell did not
16 enforce or comply with Sarbanes-Oxley, despite its legal obligation under U.S. law to
17 do so, and they will not now sue themselves for their failures to achieve such
18 compliance.

19 118. The Individual Defendants' conduct described herein and summarized
20 above demonstrate a pattern of misconduct that could not have been the product of
21 legitimate business judgment as it was based on intentional, reckless and disloyal
22 misconduct. Thus, none of the Individual Defendants, who constitute a majority of
23 the current Board of the Company, can claim exculpation from their violations of
24 duty pursuant to the Company's charter (to the extent such a provision exists). As a
25 majority of the Individual Defendants face a substantial likelihood of liability, they
26 are self-interested in the transactions challenged herein and cannot be presumed to be
27 capable of exercising independent and disinterested judgment about whether to
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1 pursue this action on behalf of the shareholders of the Company. Accordingly,
2 demand is excused as being futile.

3 119. Furthermore, the Maxwell Board is still dominated and controlled by the
4 exact same wrongdoers who continue to obscure their own misconduct, and will not
5 take action to protect the interests of Maxwell or its shareholders. The present Board
6 has refused, and will continue to refuse, to institute this action for the foregoing and
7 following reasons:

- 8 a) The acts complained of herein constitute violations of fiduciary duties
9 owed by the Board of Directors and these acts are incapable of
10 ratification;
- 11 b) Certain of the known principal wrongdoers and beneficiaries of the
12 wrongdoing complained of herein are in a position to, and do, dominate
13 and control the Board of Directors. Thus, the Board could not exercise
14 independent objective judgment in deciding whether to bring or
15 vigorously prosecute this action;
- 16 c) The acts complained of herein are illegal and improper and thus are acts
17 incapable of ratification;
- 18 d) In order to bring this action for breach of fiduciary duty, the members of
19 the Board of Directors would have been required to sue themselves
20 and/or their fellow directors and allies in the top ranks of the Company,
21 who have personal relationships and with whom they have entangling
22 financial alliances, interests, and dependencies, which they would not
23 do. They therefore would not be able to vigorously prosecute any such
24 action; and
- 25 e) The members of the Maxwell Board, including each of the Defendants
26 herein, receive substantial salaries, bonuses, payments, benefits, and
27 other emoluments by virtue of their membership on the Board and their
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1 control of Maxwell. They have thus benefited from the wrongs herein
2 alleged and have engaged therein to preserve their positions of control
3 and the perquisites thereof, and are incapable of exercising independent
4 objective judgment in deciding whether to bring this action. The Board
5 members also have close personal or business ties with each other and
6 are, consequently, interested parties and cannot in good faith exercise
7 independent business judgment to determine whether to bring this action
8 against themselves. The Director Defendants salaries actually increased
9 each year during the Relevant Period. Defendant Schramm received
10 \$1,578,400 in total compensation in 2011, up from \$1,160,600 in 2010,
11 and \$1,068,700 in 2009. This 2011 raise was due in large part to the
12 false financial figures that Maxwell released under his watch. The same
13 is true for the non-executive directors. Defendant Guyett received
14 \$80,178 in cash compensation in 2011, up from \$51,875 in 2010, and
15 \$49,250 in 2009. Defendant Rossi saw a similar spike for 2011,
16 receiving \$85,822 in cash compensation for that year, up from \$43,750
17 in 2010 and \$49,250 in 2009. Defendant Jorden's cash compensation for
18 2011 soared to \$66,000, a far cry from her \$34,250 in 2010 and \$23,500
19 in 2009. Lastly, the largest percentage increase in salary went to
20 Defendant Howsmon. He received \$56,000 in cash compensation in
21 2011, up from \$15,000 in 2010 and \$18,500 in 2009.

22 120. Moreover, each of the Individual Defendants, as an officer or director of
23 Maxwell, had intimate knowledge of all major operations of the Company, and yet
24 participated in dissemination of material misstatements of the Company's financial
25 information. Thus, the Individual Defendants all have a personal interest in
26 concealing any blame for Maxwell's internal control problems, and shifting the blame
27 away from themselves for consciously disregarding fiduciary duties. An
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1 investigation or inquiry that spread blame higher up the corporate ladder — to the
2 Individual Defendants, as officers and/or directors — would not be in the personal
3 interest of the Individual Defendants. The result of such an inquiry would require
4 them to return valuable but unearned compensation to the Company.

5 121. In addition, all defendants face a sufficiently substantial likelihood of
6 liability, and, thus, there is a reasonable doubt as to his disinterestedness in deciding
7 whether pursuing legal action would be in the Company's best interest.

8 **DAMAGES TO THE COMPANY**

9 122. As a direct and proximate result of the Individual Defendants'
10 misconduct, Maxwell failed to maintain proper internal accounting controls, caused
11 the Company to release false and misleading statements, and substantially damaged
12 the Company's market capitalization and goodwill.

13 123. Furthermore, Maxwell has expended and will continue to expend
14 significant sums of money. Such expenditures include, but are not limited to:

15 (a) the extensive costs, including the hiring of additional auditors and
16 the waste of resources incurred in investigating and defending Maxwell and certain
17 officers in the Securities Class Action, plus potentially hundreds of millions of dollars
18 in settlement or to satisfy an adverse judgment;

19 (b) the extensive costs incurred in investigating the claims made and
20 from the settlements reached relating to Maxwell's lack of internal controls with
21 regard to the FCPA;

22 (c) costs incurred from compensation and benefits paid to the
23 Individual Defendants, which compensation was based at least in part on Maxwell's
24 artificially-inflated stock price and inflated growth prospects; and

25 (d) costs incurred from the loss of the Company's customers'
26 confidence in Maxwell's products.
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1 124. Maxwell has already admitted that it will have to restate its previously
2 filed financial statements. This restatement will subject the Company to significant
3 costs in the form of accounting, legal, and similar professional fees, in addition to the
4 substantial diversion of time and attention of the Company's CFO, other officers and
5 directors and members of the Company's accounting department in preparing and
6 reviewing the restatement. Any such restatement could also adversely affect the
7 Company's business, its ability to access the capital markets and the market price of
8 Maxwell common stock.

9 125. The wrongful acts described above have also led to the loss of two key
10 Maxwell executives, the Senior Vice President of Sales and Marketing and the Chief
11 Operating Officer. In order to replace these officers, the Company will have to
12 expend untold resources and pay adequate compensation to recruit talented
13 candidates. The search will also cause a substantial diversion of time and attention of
14 the Company's remaining officers and directors and lengthen the period of time
15 necessary to implement proper internal controls.

16 126. On March 20, 2013, Maxwell received a notification letter from the
17 Listing Qualifications Department of the NASDAQ Stock Market LLC
18 ("NASDAQ") advising the Company that it is not in compliance with NASDAQ
19 Listing Rule 5250(c)(1) for continued listing due to the Company's inability to file its
20 annual report on Form 10-K with the SEC for the year ended December 31, 2012 on a
21 timely basis. Although, the letter has no immediate effect on the listing of the
22 Company's common stock, it is the first step in the process of being delisted from the
23 NASDAQ exchange. If Maxwell's stock is delisted from NASDAQ it will suffer a
24 severe drop in value because it will no longer be readily tradable.

25 127. Moreover, these actions have irreparably damaged Maxwell's corporate
26 image and goodwill. For at least the foreseeable future, Maxwell will suffer from
27 what is known as the "liar's discount," a term applied to the stocks of companies who
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1 have been implicated in illegal behavior and have misled the investing public, such
2 that Maxwell's ability to raise equity capital or debt on favorable terms in the future
3 is now impaired.

4 **COUNT I**

5 **DERIVATIVELY AGAINST ALL DEFENDANTS**
6 **FOR BREACH OF FIDUCIARY DUTY**

7 128. Plaintiff incorporates by reference and re-alleges each and every
8 allegation contained above, as though fully set forth herein.

9 129. Defendants owed and owe Maxwell fiduciary obligations. By reason of
10 their fiduciary relationships, the Individual Defendants owed and owe Maxwell the
11 highest obligation of loyalty, good faith, due care, oversight, fair dealing, and candor.

12 130. All of the Individual Defendants violated and breached their fiduciary
13 duties of loyalty, good faith, due care, oversight, fair dealing, and candor.

14 131. Each of the Individual Defendants had actual or constructive knowledge
15 that they had caused the Company to improperly misrepresent the financial condition
16 of the Company and failed to correct the Company's publicly reported financial
17 results and guidance. These actions could not have been a good faith exercise of
18 prudent business judgment to protect and promote the Company's corporate interests.

19 132. Defendants caused or allowed Maxwell to lack requisite internal
20 controls, and, as a result, the Company's projections and reported results were based
21 upon defective assumptions, manipulated facts, and/or fraudulent accounting
22 practices.

23 133. Defendants failed to supervise, and to exert internal controls over, and
24 consciously disregarded responsibilities involving the Company.

25 134. Defendants caused or allowed financial statements to be materially
26 misstated.

1 135. Defendants caused or allowed Maxwell's Relevant Period financial
2 statements to be materially misleading and not prepared in accordance with GAAP
3 principles.

4 136. Defendants caused or allowed Maxwell to fail to disclose pertinent and
5 material information.

6 137. As a direct and proximate result of the Individual Defendants' failure to
7 perform their fiduciary obligations, Maxwell has sustained significant damages. As a
8 result of the misconduct alleged herein, the Individual Defendants are liable to the
9 Company.

10 **COUNT II**

11 **DERIVATIVELY AGAINST ALL DEFENDANTS** 12 **FOR ABUSE OF CONTROL**

13 138. Plaintiff incorporates by reference and re-alleges each and every
14 allegation contained above, as though fully set forth herein.

15 139. Defendants' misconduct alleged herein constituted an abuse of their
16 ability to control and influence Maxwell, for which they are legally responsible.
17 Among the abuses of control was: (i) defendants' failure to supervise, and to exert
18 internal controls over, and conscious disregard of responsibilities involving proper
19 accounting of the Company's financial operations and (ii) defendants' reckless and/or
20 grossly negligent failure to properly utilize corporate wide stress tests to determine
21 whether or not the Company's stated financials were properly accounted for in
22 accordance with the Company's policies.

23 140. As a direct and proximate result of defendants' abuse of control,
24 Maxwell has sustained significant damages.

25 141. As a result of the misconduct alleged herein, defendants are liable to the
26 Company.

COUNT III

**DERIVATIVELY AGAINST ALL DEFENDANTS FOR GROSS
MISMANAGEMENT**

142. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

143. By their actions alleged herein, the Individual Defendants abandoned and abdicated their responsibilities and fiduciary duties with regard to prudently managing the assets and business of Maxwell in a manner consistent with the operations of a publicly held corporation.

144. The Individual Defendants caused or allowed Maxwell to lack requisite internal controls, and as a result, the Company's projections and reported results were based upon defective assumptions and/or manipulated accounting procedures.

145. The Individual Defendants caused or allowed the Company's financial statements to be materially misstated due to the defendants' failure to properly account for the Company's revenue recognition and other financial measurements.

146. The Individual Defendants failed to supervise, and to exert internal controls over, and consciously disregarded responsibilities involving the Company financial statements, as well as the Company's safety and compliance practices.

147. The Individual Defendants caused or allowed financial statements to be materially misstated.

148. The Individual Defendants, including members of the Audit Committee, did not take seriously their primary responsibility for the Company's safety, compliance, and financial reporting activities.

149. As a direct and proximate result of The Individual Defendants' gross mismanagement and breaches of duty alleged herein, Maxwell has sustained significant damages in excess of hundreds of millions of dollars.

150. As a result of the misconduct and breaches of duty alleged herein, the Individual Defendants are liable to the Company.

COUNT IV

DERIVATIVELY AGAINST ALL DEFENDANTS
FOR WASTE OF CORPORATE ASSETS

151. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

152. As alleged herein, the Individual Defendants have caused Maxwell to waste valuable corporate assets by awarding Defendants Schramm, Royal, Andrews, and Kreigler excessive and improper compensation and benefits paid based, in part, on the inaccurate financial statements complained of herein.

153. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

COUNT V

**DERIVATIVELY AGAINST DEFENDANTS SCHRAMM, ROYAL,
ANDREWS, AND KREIGLER FOR UNJUST ENRICHMENT**

154. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

155. Defendants Schramm, Royal, Andrews, and Kreigler were unjustly enriched by their receipt of excessive compensation in the form of increased annual base salaries, long and short-term incentive based compensation, and cash bonuses, that were given based, in part, on the inaccurate financial statements complained of herein. They are thus in possession of money and other property which, in equity and good conscience, should be returned to the Company.

156. It would be unconscionable and against the fundamental principles of justice, equity, and good conscience for Defendants Schramm, Royal, Andrews, and

1 Kreigler to retain the excessive and unwarranted financial payments they have
2 received.

3 157. To remedy the Defendants Schramm, Royal, Andrews, and Kreigler's
4 unjust enrichment, the Court should enter an order compelling them to disgorge to the
5 Company the proceeds they received from increased annual base salaries, long and
6 short-term incentive based compensation, and cash bonuses.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiff demands judgment as follows:

9 A. Against all of the Individual Defendants and in favor of Maxwell for the
10 amount of damages sustained by the Company as a result of the Individual
11 Defendants' breaches of fiduciary duties, abuse of control, gross mismanagement,
12 waste of corporate assets and negligence.

13 B. Directing Maxwell to take all necessary actions to reform and improve
14 their corporate governance and internal procedures to comply with applicable laws
15 and to protect Maxwell and its shareholders from a repeat of the damaging events
16 described herein, including, but not limited to, putting forward for shareholder vote
17 resolutions and amendments to Maxwell's By-Laws or Articles of Incorporation and
18 taking such other action as may be necessary to place before shareholders for a vote
19 the following Corporate Governance Policies, including measures to:

20 i. Strengthen the Board's supervision of accounting and legal
21 compliance by the company, including the development of procedures for greater
22 shareholder input into the policies and guidelines of the Audit Committee;

23 ii. Permit the Maxwell shareholders to nominate at least two
24 candidates to the Audit Committee.

25 iii. Remove Defendant Schramm from his role as Chairman and CEO
26 of Maxwell.

1 C. Awarding to Plaintiff the costs and disbursements of the action,
2 including reasonable attorneys' fees, accountants' and experts' fees, costs, and
3 expenses;

4 D. And such other relief as this Court deems just and proper.

5 **JURY DEMAND**

6 Plaintiff hereby demands a trial by jury for all claims triable to a jury.

7 Dated: April 13, 2013

8 Respectfully submitted,

9 **FARUQI & FARUQI, LLP**

10 BY:

11 
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24 *Attorneys for Plaintiff*

VERIFICATION

I, Walter Kienzle, hereby verify that I have authorized the filing of the attached Verified Shareholder Derivative Complaint, that I have reviewed the Verified Shareholder Derivative Complaint and that the facts therein are true and correct to the best of my knowledge, information and belief. I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 22, 2013


Walter Kienzle